Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 15 MARCH 25, 1981 No. 12

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81–45)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued April 23, 1980, to February 20, 1981, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313 (a) and (b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

Dated: March 4, 1981.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Allied Products Corp.
Section 1313(a) articles: Automobile and truck parts; agricultural implements, grain bins, and various other articles and parts thereof.
Section 1313(a) merchandise: Fasteners, castings, parts, and various other merchandise.
Section 1313(b) articles: Automobile and truck parts; agricultural implements, grain bins, and various other articles and parts thereof.
Section 1313(b) merchandise: Steel, various forms; rods, steel; wire; zincrometal; steel and aluminum tubing; aluminum; zinc; galvanized wire rope and cable; nickel powder; ferrous fasteners; numerous parts.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: January 12, 1980.
Basis of claim: Used in, less valuable waste; and appearing in.

Rate forwarded to Regional Commissioner of Customs: New York, November 10, 1980.

(B) Company: American Motors Corp.
Section 1313(a) articles: Four-wheel-drive motor vehicles; parts, subassemblies, and assemblies thereof.
Section 1313(a) merchandise: Four-wheel-drive system componentry, subassemblies, assemblies and parts for four-wheel-drive motor vehicles.
Section 1313(b) articles: Four-wheel-drive motor vehicles; parts, subassemblies, and assemblies thereof.
Section 1313(b) merchandise: Four-wheel-drive system componentry, subassemblies, assemblies and parts for four-wheel-drive motor vehicles.
Factory: Kenosha, Wis.
Statement signed: June 19, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, October 6, 1980.

(C) Company: Atari, Inc.
Section 1313(a) articles: Electronic video driving game (type F–1); consumer television games (home use).
Section 1313(a) merchandise: Electronic video driving game kit (type F–1); switchboard assemblies.
Section 1313(b) articles: Electronic coin-operated video games (arcade type); electronic coin-operated pinball games; consumer television games (home use).
Section 1313(b) merchandise: Television monitors; harnesses (wire assemblies); coindoor mechanisms; switchboard assemblies; radio frequency modules; semiconductor printed circuit boards, and satellite components.
Factories: Sunnyvale, Calif. (5).
Statement signed: September 7, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs; San Francisco, August 25, 1980.

(D) Company: Boldemann Chocolate Co., Inc. (Division of Blommer Chocolate Co.)
Section 1313(a) articles: Milk chocolate coating.
Section 1313(a) merchandise: Chocolate crumbs.
Section 1313(b) articles: Milk chocolate coating; milk chocolate pokies; milk chocolate peanut pokies.
Section 1313(b) merchandise: Hard refined sugar.

Factory: Union City, Calif.
Statement signed: April 16, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, June 16, 1980.

(E) Company: Bose Corp.
Section 1313(a) articles: High fidelity loudspeaker systems, components, and accessories.
Section 1313(a) merchandise: Forged back plates; capstans; amplifier cases; receivers; turntables.
Section 1313(b) articles: High fidelity loudspeaker systems, components, and accessories.
Section 1313(b) merchandise: High fidelity loudspeaker parts.
Factories: Framingham, Mass. Toa Baja and Cidra, P.R.
Statement signed: October 6, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs in accordance with section 22.4(o)(2): Boston, October 9, 1980.
Revokes: Unpublished headquarter's authorization letter dated September 25, 1980.

(F) Company: Carboline Co.
Section 1313(a) articles: Various chemical resistant coatings.
Section 1313(a) merchandise: Diglycidal ether Bisphenol F resins; ethyl silicate.
Section 1313(b) articles: Various chemical resistant coatings.
Section 1313(b) merchandise: Diglycidal ether Bisphenol F resins; ethyl silicate.
Factories: Xenia, Ohio; Lake Charles, La.; Hayward, Calif.
Statement signed: May 22, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, August 25, 1980.
Revokes: T.D. 79–84–D.

(G) Company: Fisons Inc.
Section 1313(a) articles: Ficam W (an insecticide).
Section 1313(a) merchandise: Arkopon T; Dyapol PT; Neosyl.
Section 1313(b) articles: Bendiocarb Technical; Ficam W (insecticides).
Section 1313(b) merchandise: Pyrogallol (designated); Pyrogallic acid (domestic); dimethoxypropane.
Factory: North Muskegon, Mich.
Statement signed: July 10, 1980.

Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Boston, October 31, 1980.

(H) Company: G. F. Business Equipment, Inc.
Section 1313(a) articles: Chairs.
Section 1313(a) merchandise: Wooden seat bottoms and backs.
Section 1313(b) articles: Office furniture, accessories and parts thereof; agricultural and/or industrial tractor cabs.
Section 1313(b) merchandise: Hot rolled, cold rolled, and galvanized steel sheet, strips, and blanks.
Factories: Youngstown, Ohio; Sturgis, Mich.; Rochester, Minn.; Forest City, N.C.; Gallatin, Tenn.
Statement signed: May 30, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, October 14, 1980.

(I) Company: Glen Raven Mills, Inc.
Section 1313(a) articles: 100 percent cotton finished army duck fabric.
Section 1313(a) merchandise: Greige piece goods.
Section 1313(b) articles: 100 percent cotton finished army duck fabric.
Section 1313(b) merchandise: Greige piece goods.
Factory: Glen Raven, N.C.
Statement signed: September 26, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, November 21, 1980.

(J) Company: Intel Corp.
Section 1313(a) articles: Integrated circuits in die and wafer form, partially fabricated; finished integrated circuits and semiconductor devices; finished systems and related equipment.
Section 1313(a) merchandise: High purity silicon wafers; packages (bases and window frames); frames; lids; integrated circuits and semiconductor devices, finished and unfinished.
Section 1313(b) articles: Integrated circuits in die and wafer form, partially fabricated; finished integrated circuits and semiconductor devices; finished systems; and related equipment.
Section 1313(b) merchandise: High purity silicon wafers; packages (bases and window frames); frames; lids; integrated circuits; and semiconductor devices; finished and unfinished.
Factories: Santa Clara (3), Sunnyvale, Mountain View, Santa Cruz, Livermore, Calif.; Aloha, Orego.; Chandler and Phoenix, Ariz.
Statement signed: February 6, 1980.

Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, May 28, 1980.

(K) Company: Interstab Chemicals Inc.
Section 1313(a) articles: Lead octoate.
Section 1313(a) merchandise: Iso nonanoic acid.
Section 1313(b) articles: Various chemical compounds, mixtures and blends.
Section 1313(b) merchandise: 2 ethyl hexoic acid; oleic acid; cadmium oxide; zinc oxide; dibutyltin oxide; barium hydroxide monohydrate; triphenyl phosphite; isooctyl thioglycolate; phenyl diisodecyl phosephite; epoxidized soybean oil; tributyltin oxide; diphenyl isooctyl phosphite.
Factory: New Brunswick, N.J.
Statement signed: December 6, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, August 12, 1980.

(L) Company: J. I. Case Co., Drott Division.
Section 1313(a) articles: Traveling cranes, excavators, tree harvesters and handlers, industrial material handling machines, and parts thereof.
Section 1313(a) merchandise: Steel blanks and plate; castings; forgings; and numerous other parts identified by part number.
Section 1313(b) articles: Traveling cranes, excavators, tree harvesters and handlers, industrial material handling machines, and parts thereof.
Section 1313(b) merchandise: Steel plate and blanks; castings; forgings; and numerous other parts identified by part number.
Factory: Schofield, Wis.
Statement signed: May 21, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, August 14, 1980.
Revokes: T.D. 72–282–E and unpublished amendment of June 25, 1975.

(M) Company: Labelon Corp.
Section 1313(a) articles: Projection transparencies.
Section 1313(a) merchandise: Polyester film.
Section 1313(b) articles: Projection transparencies.
Section 1313(b) merchandise: Polyester film.
Factory: Canandaigua, N.Y.

Statement signed: August 20, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Boston, August 25, 1980.

(N) Company: Eli Lilly and Co.
Section 1313(a) articles: Vincristine sulfate in intermediate, bulk, and finished product formulations.
Section 1313(a) merchandise: Vincristine sulfate.
Section 1313(b) articles: Vincristine sulfate in intermediate, bulk and finished product formulations.
Section 1313(b) merchandise: Vincristine sulfate.
Factory: Indianapolis, Ind.
Statement signed: October 27, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, February 20, 1981.
Revokes: T.D. 72–282–K.

(O) Company: Eli Lilly & Co.
Section 1313(a) articles: Flurandrenolide tape bulk; cream 9 Cordran; cream 11 Cordran; cream 12 Cordran; M–128 Cordran lotion; M–170 Cordran tape; ointment 79 Cordran; ointment 85 Cordran; ointment 86 Cordran; SM 170 bulk drenison tape.
Section 1313(a) merchandise: Flurandrenolide.
Section 1313(b) articles: Flurandrenolide tape bulk; cream 9 Cordran; cream 11 Cordran; cream 12 Cordran; M–128 Cordran lotion; M–170 Cordran tape; ointment 79 Cordran; ointment 85 Cordran; ointment 86 Cordran; SM 170 bulk drenison tape.
Section 1313(b) merchandise: Flurandrenolide.
Factories: Indianapolis, Ind.; Cottage Grove and St. Paul, Minn. Brookings, S.D.
State signed: June 4, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, November 24, 1980.

(P) Company: The Lubrizol Corp.
Section 1313(a) articles: Basic calcium sulfonate; sulfonic acid; finished lubricant additives.
Section 1313(a) merchandise: Polyalkylbenzene.
Section 1313(b) articles: Basic calcium sulfonate; sulfonic acid; finished lubricant additives.
Section 1313(b) merchandise: Polyalkylbenzene; basic calcium sulfonate.

Factories: Painesville, Ohio; Deer Park and Pasadena, Tex.
Statement signed: June 13, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, August 4, 1980.

(Q) Company: NAPP Systems (U.S.A.) Inc.
Section 1313(a) articles: Letterpress printing plates.
Section 1313(a) merchandise: Rosebengal; Kosin-GS; polyethylene glycol dimethacrylate; polyvinyl alcohol gohsenol.
Section 1313(b) articles: Letterpress printing plates.
Section 1313(b) merchandise: Electrolytic tin coil; aluminum coil, litho grade; 2-6-D1-tert-butyl-4 methylphenol; benzoin isopropyl ether; methylen BIS acrylamide; 2-hydroxyethyl methacrylate; polyvinyl alcohol (two types).
Factory: San Marcos, Calif.
Statement signed: March 6, 1980.
Basis of claim: Used in as to chemicals; used in, less valuable waste as to metals.
Rate forwarded to Regional Commissioner of Customs: San Francisco, November 6, 1980.

(R) Company: North East Shipping Corp.
Section 1313(a) articles: Electrolytic tinplate secondary and galvanized steel, slit and cut to size.
Section 1313(a) merchandise: Electrolytic tinplate secondary and galvanized steel in coils and sheets.
Section 1313(b) articles: Electrolytic tinplate secondary and galvanized steel, slit and cut to size.
Section 1313(b) merchandise: Electrolytic tinplate secondary and galvanized steel in coils and sheets.
Factories: Cucamonga and Alameda, Calif.; South Kearny, N.J.
Statement signed: March 5, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, October 8, 1980.

(S) Company: Otis Engineering Corp.
Section 1313(a) articles: Oilfield equipment and accessories.
Section 1313(a) merchandise: Hot and cold rolled plate, bar, tubing and angles; and monel bars.
Section 1313(b) articles: Oilfield equipment and accessories.
Section 1313(b) merchandise: Hot and cold rolled plate, bar, tubing and angles; and monel bars.
Factories: Carrollton, Graham, and Cisco, Tex.

Statement signed: August 18, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Houston, August 25, 1980.

(T) Company: Pinole Point Steel Co.
Section 1313(a) articles: Galvanized steel in sheet or coil form.
Section 1313(a) merchandise: Cold rolled hard coiled sheet steel and high grade zinc with controlled lead.
Section 1313(b) articles: Galvanized steel in sheet or coil form.
Section 1313(b) merchandise: Cold rolled hard coiled sheet steel and high grade zinc with controlled lead.
Factory: Richmond, Calif.
Statement signed: October 25, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, October 14, 1980.

(U) Company: Simplex Wire & Cable Co.
Section 1313(a) articles: Submarine telephone cable.
Section 1313(a) merchandise: Galvanized steel armoring wire; bright steel strand wire.
Section 1313(b) articles: Submarine telephone cable.
Section 1313(b) merchandise: Galvanized steel armoring wire; high tensile bright steel stranded wire.
Factory: Newington, N.H.
Statement signed: November 20, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Boston, February 3, 1981.

(V) Company: Toledo Pickling & Steel Service, Inc.
Section 1313(a) articles: Hot rolled, cold rolled, or galvanized steel, pickled, coated, and cut to specified sizes.
Section 1313(a) merchandise: Hot rolled, cold rolled, and galvanized steel sheet in coils.
Section 1313(b) articles: Hot rolled, cold rolled, or galvanized steel; pickled, coated, and cut to specified sizes.
Section 1313(b) merchandise: Hot rolled, cold rolled, and galvanized steel sheet in coils.
Factory: Toledo, Ohio.
Statement signed: July 9, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: New York and Chicago, November 19, 1980.
Revokes: T.D. 80–111–W.

(W) Company: Toshiba America, Inc., Manufacturing Division.
Section 1313(a) articles: Televisions, stereos, microwave ovens, copiers, refrigerators, calculators, other electronic articles.
Section 1313(a) merchandise: Magnatron tubes, television picture tubes, and various electronic parts and assemblies.
Section 1313(b) articles: Televisions, stereos, microwave ovens, copiers, refrigerators, calculators, other electronic articles.
Section 1313(b) merchandise: Magnatron tubes, television picture tubes, and various electronic parts and assemblies.
Factory: Lebanon, Tenn.
Statement signed: October 1, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, January 13, 1981.

(X) Company: Waltham Watch Co.
Section 1313(a) articles: Various watches and watch heads.
Section 1313(a) merchandise: Various watch movements, cases, heads, and bracelets.
Section 1313(b) articles: Various watches and watch heads.
Section 1313(b) merchandise: Various watch movements, cases, heads, and bracelets.
Factories: Chicago, Ill.; Bridgeport, Conn.; Miami, Fla.
Statement signed: April 14, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs in accordance with section 22.4(o)(2): Chicago, April 23, 1980.
Revokes: T.D. 80–94–X.

(Y) Company: Westinghouse Electric Corp.
Section 1313(a) articles: Combustion gas turbines assemblies.
Section 1313(a) merchandise: Blade ring casting (base and cover); exhaust cylinder (base and cover); blade ring/turbine cylinder (base and cover); outer inlet casings (base and cover); inner inlet casings (base and cover) (all foregoing rough machined); struts, inlet casing castings; compressor-combustor cylinders (base and cover) fabrications.
Section 1313(b) articles: Combustion gas turbines assemblies.
Section 1313(b) merchandise: Semifinished gas turbine components.
Factory: Philadelphia, Pa.
Statement signed: July 23, 1979.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New York, July 17, 1980.
Revokes: T.D. 79–84–X.

(Z) Company: Weyerhaeuser Co.
Section 1313(a) articles: Kraft linerboard.
Section 1313(a) merchandise: Retamyl; Retamyl MP.
Section 1313(b) articles: Kraft linerboard.
Section 1313(b) merchandise: Posamyl-E; Posamyl E–7; Posamyl-C.
Factory: Springfield, Oreg.
Statement signed: August 15, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, October 6, 1980.

(T.D. 81–46)

Bonds

Approval of carrier's bond, customs form 3587; amendment to T.D. 80–242

T.D. 80–242 relating to the temporary approval of the carrier's bond of the following principal is hereby amended as necessary to show that such bond has been permanently approved as noted below.

Dated: March 5, 1981.

Principal:

	Effective date of permanent authority
Norwood Transport, Inc., division of Nettleton Enterprises Co., Inc.	Jan. 7, 1981.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 81–47)

Bonds

Approval and discontinuance of carrier's bonds, Customs form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: March 6, 1981.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Advance Air Freight, Inc., P.O. Box 2291, Nashville, TN; freight forwarder; Fireman's Fund Ins. Co.	Feb. 2, 1981	Feb. 9, 1981	New Orleans, LA; $50,000
B & P Motor Express Co., 825 W. Federal St., Youngstown, OH; motor carrier; Commercial Union Ins. Co.	Feb. 10, 1981	Feb. 12, 1981	Baltimore, MD; $25,000
Compania Poncena de Transporte, Inc., P.O. Box 135, Mercedita, PR; motor carrier; New Hampshire Ins. Co.	Oct. 24, 1980	Nov. 20, 1980	San Juan, PR; $25,000
Courier-Newsom Express, Inc., 2505 National Rd., P.O. Box 509, Columbus, IN; motor carrier; St. Paul Fire & Marine Ins. Co. D 2/4/81	Mar. 1, 1969	June 2, 1969	Cleveland, OH; $30,000
D & S Freight Service, Inc., 524 C St., Boston, MA; motor carrier; Federal Ins. Co. D 10/21/80	June 24, 1972	June 24, 1972	Boston, MA; $50,000
Daily Express, Inc., 1076 Harrisburg Pike, Carlisle, PA; motor carrier; Washington International Ins. Co.[1] (PB 4/20/77) D 2/5/81	Jan. 22, 1981	Feb. 5, 1981	Baltimore, MD; $50,000
GSC Transport, Inc., 166 National Road, Edison, NJ; motor carrier; Investors Ins. Co. of America	Feb. 5, 1981	Feb. 11, 1981	Newark, NJ; $50,000
Indianhead Truck Line, Inc., 1947 W. County Road C, St. Paul, MN; motor carrier; Ins. Co. of North America (PB 10/4/78) D 12/16/80 [2]	Oct. 4, 1980	Dec. 17, 1980	Minneapolis, MN; $35,000
Inland Express, Inc., P.O. Box 73, Marlboro, MA; motor carrier; Hartford Accident & Indemnity Co. D 11/16/80	Sept. 13, 1967	Nov. 1, 1967	Boston, MA; $50,000
Los Angeles-Yuma Freight Lines, Inc., P.O. Box 4460, Yuma, AZ; motor carrier; Peerless Ins. Co. (PB 1/17/73) D 2/11/81 [3]	Jan. 15, 1981	Feb. 11, 1981	Nogales, AZ; $25,000
B. J. McAdams, Inc., Rt. 6, Box 15, North Little Rock, AR; motor carrier; Reliance Ins. Co. D 3/17/81	Nov. 21, 1978	Nov. 30, 1978	Nogales, AZ; $25,000
McLaurin Trucking Co., P.O. Box 26506, Charlotte, NC; motor carrier; U.S. Fidelity & Guaranty Co.	Feb. 3, 1981	Feb. 19, 1981	Wilmington, NC; $25,000
Maislin Transport, Ltd., Maislin Transport of Delaware, Inc., and Port Express Int'l. Inc., 530 Totem Rd., Bensalem Twp., Bucks County, PA; motor carrier; The Aetna Casualty & Surety Co. (PB 10/25/79) D 2/20/81 [4]	Dec. 17, 1980	Feb. 21, 1981	Phila, PA; $150,000
Mattan Transport, Inc., 363 Arvin Ave., Stoney Creek, Ontario, Canada; motor carrier; Old Republic Ins. Co.	Feb. 6, 1981	Feb. 9, 1981	Detroit, MI; $50,000
Neptune World Wide Moving, Inc., 55 Weyman Ave., New Rochelle, NY; motor carrier; Ins. Co. of North America	Jan. 5, 1981	Feb. 9, 1981	New York Seaport; $50,000

See footnotes at end of table.

338-579 O - 81 - 2

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Pan American Van Lines, Inc., 18420 S. Santa Fe Avenue, Long Beach, CA; motor carrier; The Continental Ins. Co. (PB 1/5/77) D 1/19/81 [5]	Jan. 5, 1981	Jan. 20, 1981	Los Angeles, CA; $50,000
Port Express Int'l Inc. (See Maislin Transport, Ltd.)			
Regency Motor Freight Inc., 26600 Van Born Rd., Dearborn Heights, MI; motor carrier; Continental Casualty Co. D 2/10/81	Feb. 14, 1980	May 9, 1980	Milwaukee, WI; $25,000
Reliable Transport (U.S.) Ltd., 64 Mackinaw St., Buffalo, NY; motor carrier; The Continental Ins. Co. D 2/6/81	Feb. 6, 1980	Mar. 28, 1980	Buffalo, NY; $25,000
Reliance Motor Express, Inc., 28 Fitchburg St., Somerville, MA; motor carrier; Liberty Mutual Ins. Co. (PB 9/5/79) D 2/2/81 [6]	Nov. 25, 1980	Feb. 2, 1981	Boston, MA; $50,000
Smith Transport (International) Ltd., 150 Commissioners St., Toronto 249, Ontario, Canada; motor carrier; United States Fidelity & Guaranty Co. D 2/17/81	Sept. 7, 1972	Sept. 26, 1972	Detroit, MI; $50,000
Floyd Smith Jr. Trucking, Inc., P.O. Box 816, Meridian, Idaho; motor carrier; Mid-Century Ins. Co. D 2/2/81	Aug. 17, 1979	Oct. 17, 1979	Great Falls, MT; $25,000
West Coast Truck Lines, Inc., 85647 Highway 99 South, Eugene, OR; motor carrier; Fireman's Fund Ins. Co. (PB 3/11/74) D 2/17/81 [7]	Feb. 2, 1981	Feb. 17, 1981	Portland, OR; $25,000

[1] Surety is Protective Ins. Co.
[2] Surety is Great American Ins. Co.
[3] Surety is Transport Indemnity Co.
[4] Surety is Globe Indemnity Co.
[5] Surety is Peerless Ins. Co.
[6] Surety is The Hanover Ins. Co.
[7] Surety is Oregon Automobile Ins. Co.

(BON–3–03)

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 81–48)

Notice of Recordation of Trade Name American Machine & Tool Co., Inc.

On November 13, 1980, there was published in the Federal Register (45 F.R. 75046) a notice of application for the recordation under sec-

tion 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name American Machine & Tool Co., Inc. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name American Machine & Tool Co., Inc. is hereby recorded as the trade name of American Machine & Tool Co., Inc., a corporation organized under the laws of the State of Pennsylvania, located at Fourth Avenue and Spring Street, Royersford, Pa. 19468, when applied to power tools, manufactured in the United States.

Dated: March 9, 1981.

A. L. PIAZZA
(For Salvatore E. Caramagno, Acting Director,
Entry Procedures and Penalties Division).

(T.D. 81–49)

Bonds

Approval to use authorized facsimile signatures and seals; T.D. 79–241 amended

The use of facsimile signatures and seals by the following corporate surety has been approved effective March 10, 1981. The corporate surety has provided the Customs Service with a copy of each signature that is to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seal. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Peerless Insurance Co., Keene, N.H., authorized facsimile signatures on file for:

Charles J. Scibetti, attorney-in-fact, witness.
Theresa Scibetti,[1] attorney-in-fact, witness.
Joan Zagami,[1] attorney-in-fact, witness.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

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[1] Approval as attorney-in-fact conditional upon filing of corporate surety power of attorney, CF 5297, issued by Peerless Insurance Co.

(T.D. 81–50)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, Peoples' Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
February 23–27, 1981	$0.0139
People's Republic of China yuan:	
February 23, 1981	$0.628575
February 24, 1981	.621157
February 25, 1981	.623636
February 26–27, 1981	.618085
Hong Kong dollar:	
February 23, 1981	$0.189233
February 24–25, 1981	.189072
February 26, 1981	.188555
February 27, 1981	.199402
Iran rial:	
February 23–27, 1981	Not available
Philippines peso:	
February 23–27, 1981	$0.1305
Singapore dollar:	
February 23, 1981	$0.478011
February 24, 1981	.476872
February 25, 1981	.476531
February 26, 1981	.477099
February 27, 1981	.475511
Thailand baht (tical):	
February 23–26, 1981	$0.0484
February 27, 1981	.0485
Venezuela bolivar:	
February 23–27, 1981	$0.2329

(LIQ–03–01 0:C:E)

Dated: February 27, 1981.

GWENN KLEIN KIRSCHNER,
Acting Chief.

(T.D. 81–51)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 81–13 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
February 23, 1981	$0.067092
February 24, 1981	.067047
February 25, 1981	.067069
February 26, 1981	.066622
February 27, 1981	.066225
Belgium franc:	
February 23, 1981	$0.029197
February 24, 1981	.029112
February 25, 1981	.029095
February 26, 1981	.028860
February 27, 1981	.028694
Denmark krone:	
February 23, 1981	$0.152964
February 24, 1981	.152555
February 25, 1981	.151745
February 26, 1981	.150943
February 27, 1981	.150376
Finland markka:	
February 24, 1981	$0.246305
February 25–26, 1981	Quarterly
February 27, 1981	.245098
France franc:	
February 23, 1981	$0.203046
February 24, 1981	.201309
February 25, 1981	.201776
February 26, 1981	.200763
February 27, 1981	.199402
Germany deutsche mark:	
February 23, 1981	$0.473485
February 24, 1981	.472590
February 25, 1981	.474608
February 26, 1981	.472590
February 27, 1981	.469263

India rupee:	
February 24, 1981	$0.1203
February 25, 1981	.1200
February 26, 1981	.1202
February 27, 1981	.1200
Ireland pound:	
February 23, 1981	$1.7480
February 24, 1981	1.7380
February 25, 1981	1.7375
February 26, 1981	1.7350
February 27, 1981	1.7150
Italy lira:	
February 23, 1981	$0.000987
February 24, 1981	.000983
February 25, 1981	.000984
February 26, 1981	.000978
February 27, 1981	.000975
Netherlands guilder:	
February 23, 1981	$0.432620
February 24, 1981	.428266
February 25, 1981	.429738
February 26, 1981	.426894
February 27, 1981	.425170
Portugal escudo:	
February 23, 1981	$0.017746
February 24, 1981	Quarterly
February 25, 1981	.017778
February 26, 1981	.017590
February 27, 1981	.017452
Spain peseta:	
February 23, 1981	$0.011689
February 24, 1981	.011662
February 25, 1981	.011635
February 26, 1981	.011553
February 27, 1981	.011514
Sri Lanka rupee:	
February 23–26, 1981	$0.055991
February 27, 1981	.055710
Sweden krone:	
February 27, 1981	$0.215517
Switzerland franc:	
February 23, 1981	$0.525624
February 24, 1981	.521105
February 25, 1981	.521785
February 26, 1981	.513347
February 27, 1981	.509684

United Kingdom pound:

February 23, 1981	$2.2440
February 24, 1981	2.2330
February 25, 1981	2.2280
February 26, 1981	2.2265
February 27, 1981	2.2040

(LIQ-03-01 O:C:C)

Dated: February 27, 1981.

GWENN KLEIN KIRSCHNER,
Acting Chief.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1258)

THE UNITED STATES *v.* SANYO ELECTRIC INC., No. 80–34

1. CLASSIFICATION OF IMPORTS—ELECTRICAL ARTICLES

Judgment of the U.S. Court of International Trade that the imported power failure lights were incorrectly classified as "flashlights" and should be classified as "[e]lectrical articles * * * not specifically provided for" is affirmed.

U.S. Court of Customs and Patent Appeals, March 5, 1981

Appeal from U.S. Customs Court, C.A.D. No. 1258

[Affirmed.]

Alice Daniel, Assistant Attorney General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney in Charge, *Susan Handler-Menahem*, of counsel, for appellant. *Peter Jay Baskin, Gail T. Cumins*, attorneys for appellee.

[Oral argument on February 2, 1981 by Susan Handler-Menahem for appellant and Peter Jay Baskin for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, and NIES, *Associate Judges*.

BALDWIN, Judge.

This is an appeal from the judgment of the U.S. Customs Court (now the U.S. Court of International Trade), 83 Cust. Ct. ——, C.D. 4855, 496 F. Supp. 1311 (1980), sustaining the appellee's claim that the imported merchandise in issue, known as a power failure light, was improperly classified as a flashlight under item 683.70 of the Tariff Schedules of the United States (TSUS) and was correctly

classifiable as electrical articles, not specifically provided for, under item 688.40.[1] We affirm.

OPINION

[1] We agree with the holding of the Court of International Trade that the imported power failure lights were incorrectly classified as "flashlights" and should be classified as "[e]lectrical articles * * * not specifically provided for." Accordingly, we affirm the judgment of the court and adopt the court's opinion as our own.

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[1] The relevant TSUS provisions are as follows:

	[Classified under:]	
	Portable electric lamps with self-contained electrical source, and parts thereof:	
683.70	Flashlights and parts thereof	35% ad val.
	[Claimed under:]	
688.40	Electrical articles, and electrical parts of articles, not specifically provided for	5.5% ad val.

United States Court of International Trade

Decision of the United States Court of International Trade

(Slip Op. 81–16)

MIRACLE EXCLUSIVES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 75–12–03317

Germination Trays—Horticultural Implements

Certain germination tray sets used to sprout seeds in water and consisting of three trays, syphon caps, a catch basin, and a lid, composed of plastic, were classified for duty purposes under item 772.15, TSUS, held, said merchandise to be entitled to entry free of duty under item 666.00, TSUS, as horticultural implements.

In addition to the testimony relating to sole and, therefore, chief use of the imported merchandise as sprouting trays, it is well established that a sample is a potent witness on the question of chief use and may permit a finding of primary or chief use when in harmony with other evidence of record. *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973); *Wilson's Customs Clearance, Inc.* v. *United States*, 59 Cust. Ct. 36, C.D. 3061 (1967); *Fred Bronner Corp.* v. *United States*, 57 Cust. Ct. 428, C.D. 2832 (1966).

Where the classified provision encompasses more than one category of merchandise and no specific classification is set forth, no presumption of correctness attaches.

Item 666.00, TSUS, has been determined to be a chief use provision. Accordingly, defendant's alternative claim of actual use in accordance with General Interpretative Rule 10(e)(ii) is not applicable.

The provision for horticultural implements first appeared in the Tariff Schedules of the United States and was, according to the "Tariff Classification Study," included to correct past confusion and anomalous results.

[Judgment for plaintiff.]

(Decided February 24, 1981)

Freeman, Meade, Wasserman & Schneider (*Kenneth N. Wolf* at the trial; *Louis Schneider* and *Angela Pitsaris* with him on the briefs) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Susan Handler-Menahem* at the trial and on the brief), for the defendant.

FORD, Judge:

This action involves the proper classification for duty purposes of certain germination trays known as Biosnacky or Biosta sprouters, which are manufactured in Switzerland and Canada. It is not disputed by counsel for the respective parties that the imported merchandise is used with water for the purpose of sprouting seeds, which are subsequently eaten.

The merchandise was classified under item 772.15, TSUS, and assessed with duty at 11.5 per centum ad valorem or 8.5 per centum ad valorem, depending upon the date of entry. The statutory language covering the classification is as follows:

> Articles chiefly used for preparing, serving, or storing food or beverages, or food or beverage ingredients; and household articles not specially provided for; all the foregoing of rubber or plastics:
>
> * * * * * * *

772.15 Other..... * * *

Plaintiff claims the importations are entitled to entry free of duty under item 666.00, TSUS, which, together with the pertinent headnote, provides as follows:

Schedule 6, part 4, subpart C:

Subpart C headnote:

1. The provisions of item 666.00 for "agricultural and horticultural implements not specially provided for" do not apply to any of the articles provided for in schedule 6, part 2, part 3 (subparts A through F, inclusive), part 5 (except item 688.40), or part 6, or to any of the articles specially provided for elsewhere in the tariff schedules, but interchangeable agricultural and horticultural implements are classifiable in item 666.00 even if mounted at the time of importation on a tractor provided for in part 6B of this schedule.

666.00 * * * agricultural and horticultural implements not specially provided for, * * *.

The record consists of the testimony of two witnesses called on behalf of plaintiff and eight exhibits (exhibit 3 having been withdrawn), as well as the official papers which were received in evidence without being marked.

Mr. Ernest Brunswick, president of plaintiff corporation, testified that he is familiar with both the Biosnacky and Biosta sprouters, having bought and sold them. Both items are identical except for the name and color. Exhibit 1 was offered and received in evidence as representative of the Biosnacky merchandise, and exhibit 2 is representative of the Biosta merchandise. Each exhibit, composed of plastic, consists of the three sprouting trays, a catch basin, a lid, three syphon caps, and instructions.

Mr. Brunswick testified that exhibit 3 consisted of a sprouter containing 3- or 4-day-old sprouts. Exhibit 3 was subsequently withdrawn and replaced with photographs, which were received as exhibits 4 and 5. The top two layers of exhibit 3 are alfalfa and the bottom is a salad mixture consisting of adzuki beans, soy beans, etc. The witness explained the use of the sprouters as follows:

Question. How did the sprouts get there?

Answer. Well, this explains the usage of the product. You put a teaspoon or so, a thin layer of seeds into each tray. You can use the same seed or three different kinds. You fill the top tray with water, and by means of the syphon action of these little red caps, the water will syphon slowly from one tray to another and finally collect in the bottom. Just sufficient water will be retained in these ridges to keep enough—just enough moisture and not too much for the seeds to grow in. The small seeds you will water again on the fourth day. The large seeds you

> can water every day. As soon as the water collects in the bottom tray, you discard it. The cover there is to keep the moisture in. The air vents on each side is so it won't mold, gets ventilation. And, in about 5 days, 5 to 6 days, it goes up to the top. [R. 15–16].

Exhibits 6, 7, and 8 consist of advertisements placed by plaintiff in various magazines. The witness testified that he sold the sprouters nationwide to consumers, distributors, retailers, seed houses, and universities. Mr. Brunswick traveled throughout the country attending both national and regional shows of the health food industry showing a growing sprouter and distributing posters and leaflets. He never attended shows directed to farmers. The witness testified the imported sprouters involve soilless growth of seeds by the addition of tap water with no addition of nutrients or fertilizer as is set forth in the definition of hydroponics. Tap water should be used in the sprouter since it contains nutrients, whereas distilled water has the minerals removed. Mr. Brunswick was of the opinion that less than 10 percent of his sales were to universities and 20 percent of his sales were to seed companies. The predominant use is in the home. Mr. Brunswick knows of no other use for the sprouters other than to sprout seeds in water as set forth in the instructions.

Mr. Marvin Olinsky, a horticulturist presently employed by Premiere Brands, Inc., was next called on behalf of plaintiff. Mr. Olinsky, prior to his present employment, was assistant director for horticulture and the first curator/director of the new conservatory at the New York Botanical Gardens. Prior to this employment, he was county agent for Rutgers University and Cornell University. Mr. Olinksy has a degree in horticulture from Delaware Valley College and a masters degree from Lehigh University. He has written professional articles in the field of agriculture and horticulture and currently writes a weekly column. Mr. Olinsky was one of several authors for the American Garden Book and served as a consultant to Time-Life Books. In addition, the witness has lectured in the field of agriculture and horticulture and has appeared on television and radio. Exhibit 9 is a résumé of the background of Mr. Olinsky.

According to the witness, horticulture is one part of the science of agriculture, and germination or sprouting is an agricultural or horticultural pursuit.

Mr. Olinsky then testified that a seed is a byproduct of the union of the pollen representing the sperm and an ovule. The endosperm which surrounds the embryo within the seed serves as a source of food. Germination results when the seed coat absorbs water and softens and permits the embryo to expand from the bottom as a primary root and from the top as a plant. The witness testified that ordinary tap water can be utilized to germinate a seed, but that controlled amounts of water are of primary concern.

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The witness stated that hydroponics is the growing of plant material in a water nutrient solution void of organic matter and soil, and that in his opinion hydroponics is both an agricultural and horticultural pursuit. Mr. Olinsky testified that he personally used the Biosnacky or Biosta germination trays for the purpose of sprouting the alfalfa seeds which he ate for breakfast that morning. The sprouted seeds were eaten whole and raw. The witness testified that he followed the instructions contained in the imported merchandise, placing seeds in the trays and adding water. Within approximately 5 days he had sprouts for his salad. In his opinion the germination process he observed in the Biosnacky was a hydroponic process.

On cross-examination Mr. Olinsky testified that in the course of his training and work he became familiar with hydroponics used commercially around the country. The witness stated that in the commercial use of hydroponics the use of nutrients and some manner of support for the plant is of great importance. In the opinion of the witness, hydroponically grown fruits and vegetables would amount to less than 10 percent of the production.

The undisputed evidence of record establishes that, at or about the time of importation, the imported merchandise was solely used as a sprouter for the germination of seeds in a soilless medium. Whether this constitutes hydroponics is one of the points of contention between the parties. Counsel for defendant has quoted a number of definitions which provide for the growing of plants with "liquid nutrient solutions" [1] or "in a solution containing certain necessary mineral salts or rooted in a sand medium".[2] While these definitions might be applicable to the commercial production of plants by hydroponics, the testimony of the botanist witness, Olinsky, makes it evident that such nutrient solutions are not necessary for sprouting seeds. The fact of the matter is that exhibit 3 (which was withdrawn and substituted with photographs received as exhibits 4 and 5) was presented to the court as an established fact, that seeds could be sprouted in the imported merchandise in tap water. No additional nutrient solution or support medium was used. This is a perfect example of the principle of law, utilized in this field of jurisprudence, that a sample often speaks for itself.

In addition to the testimony relating to sole and, therefore, chief use of the imported merchandise as sprouting trays, it is well established that a sample is a potent witness on the question of chief use and may permit a finding of primary or chief use when in harmony with other evidence of record. *Oxford International Corp.* v. *United States*,

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[1] A Dictionary of Agricultural and Allied Terminology (1962).
[2] Van Nostrand's Scientific Encyclopedia (1968), p. 875.

70 Cust. Ct. 217, C.D. 4433 (1973); *Wilson's Customs Clearance, Inc.* v. *United States*, 59 Cust. Ct. 36, C.D. 3061 (1967); *Fred Bronner Corp.* v. *United States*, 57 Cust. Ct. 428, C.D. 2832 (1966). The court is of the opinion that the chief use of the class or kind of article involved is for the cultivation of edible sprouts from seeds in a soilless medium.

Plaintiff in its reply brief presented the question of the applicability of the presumption of correctness in view of defendant's reliance on the entire provision of 772.15, supra. Defendant contends the merchandise falls within the common meaning of several portions of 772.15, supra, and, therefore, the presumption of correctness should attach to the classification under the entire provision of 772.15, supra. When merchandise is classified under one portion of a tariff provision and the Government alternatively claims for classification under another portion of the same tariff provision, the courts have held the presumption of correctness does not attach to the distinctly different article of merchandise covered by the alternative claim. *See United States* v. *White Sulphur Springs Co.*, 21 CCPA 203, T.D. 46728; *Broadway-Hale Stores, Inc.* v. *United States*, 63 Cust. Ct. 194, C.D. 3896 (1969).

In a classification such as in the case at bar, wherein the classified provision encompasses more than one category of merchandise and no specific classification is set forth, no presumption of correctness attaches. In *International Seaway Trading Corp.* v. *United States*, 81 Cust. Ct. 92, C.D. 4773, 464 F. Supp. 380 (1978), the court made the following comment:

> If defendant contends that the presumption attaches to the alternative categories of rubber and plastics, then the presumption of correctness attaches to neither of those categories. *United States* v. *White Sulphur Springs Co.*, 21 CCPA 203, T.D. 46728 (1933); *Arthur J. Humphreys* v. *United States*, 66 Cust. Ct. 24, C.D. 4163 (1971); *Domestic Marble & Stone Co.* v. *United States*, 64 Cust. Ct. 360, C.D. 4003 (1970); *Broadway-Hale Stores, Inc.* v. *United States*, 63 Cust. Ct. 194, C.D. 3896 (1969); *Gallagher & Ascher Co.* v. *United States*, 39 Cust. Ct. 1, C.D. 1892 (1957); *S.S. Kresge Co.* v. *United States*, 25 Cust. Ct. 89, C.D. 1269 1950); *Sterling Button Co.* v. *United States*, 4 Cust. Ct. 213, C.D. 324 (1940). Under these decisions, it is clear that defendant cannot contend that its classification is based upon the conclusion that merchandise fell within more than one category of merchandise even if the separate categories fall within the same paragraph or item number. The failure to apprise the importer under which category the merchandise was classified, if the admissions have not already done so, will result in the presumption of correctness attaching to none of those categories. [Pp. 104–105.]

Accordingly, no presumption of correctness attaches to the classification in the instant case. Item 666.00, supra, has been held to be a chief use provision. *Border Brokerage Company, Inc.* v. *United States*,

65 Cust. Ct. 277, C.D. 4089, 343 F. Supp. 1396 (1970), aff'd, 59 CCPA 151, C.A.D. 1058, 461 F. 2d 1383 (1972). General Interpretative Rule 10(e)(i) sets forth guidance for the determination of chief use. Defendant, in its brief, urges alternatively that if item 666.00, supra, was determined to be an actual use provision, then plaintiff has failed to comply with General Interpretative Rule 10(e)(ii). As indicated, supra, item 666.00 has heretofore been held to be a chief use provision and the court adheres to such finding.

The court notes that headnote 1, subpart c, part 4 of schedule 6 states "[t]he provisions of item 666.00 for 'agricultural and horticultural implements not specially provided for' do not apply * * * to any of the articles specially provided for elsewhere in the tariff schedules * * *." Plaintiff has established to the satisfaction of the court that the imported merchandise is not provided for in item 772.15, supra, under which Customs classified the merchandise. Additionally it is noted in the "Summaries of Trade and Tariff Information," schedule 7, volume 7 (1968) that it does not appear to cover merchandise of the class or kind involved. At pages 68–69 the following summation is made:

> As is shown in table 3, somewhat more than 80 percent of the value of the imports under consideration has been made up of a miscellaneous group of rubber and plastics housewares (TSUS item 772.15). Some of the more important of these articles known to have been imported in 1966 were: Bathmats, mattress and pillow covers, tumblers, planters, garment bags, flower pots, drinking cups, lampshades, towel racks, and salad bowl sets. Although some of the imports are novelties or unique items, most of them are similar to, and compete directly with, articles of domestic origin.

The array of cases holding an agricultural implement to be one used in the production of food from the soil or the raising of domestic animals for food and raiment, *United States* v. *Boker & Co.*, 6 Ct. Cust. Appls. 243, T.D. 35472; *United States* v. *Tower*, 6 Ct. Cust. Appls. 562, T.D. 36199, is so numerous additional citations are not necessary. In addition the court has held that only such implements as are used by farmers on farms for the production of food and raiment and not those utilized in marketing are entitled to free entry under such provision. *Staalkat of America, Inc.* v. *United States*, 59 Cust. Ct. 241, C.D. 3130, 273 F. Supp. 417 (1967), aff'd, 56 CCPA 86, C.A.D. 959, 417 F. 2d 789 (1969); *Sortex Co. of North America* v. *United States*, 56 CCPA 41, C.A.D. 951, 410 F. 2d 443 (1969).

The provision for horticultural implements first appeared in the Tariff Schedules of the United States and was, according to the "Tariff Classification Study," included to correct past confusion and anomalous results. It is axiomatic that a tariff term is to be

considered in accordance with its common meaning. *Ozen Sound Devices* v. *United States*, 67 CCPA ——, C.A.D. 1246, 620 F. 2d 880 (1980). To ascertain the common meaning of a term in trade and commerce, the court may consult dictionaries and other lexicographic material. *Schott Optical Glass, Inc.* v. *United States*, 67 CCPA ——, C.A.D. 1239, 612 F. 2d 1283 (1979). The term horticulture is defined as follows:

> *Horticulture* n. * * * the cultivation of an orchard, garden, or nursery on a small or large scale: the science and art of growing fruits, vegetables, flowers, or ornamental plants—compare Floriculture, Olericulture, Pomology. ["Webster's Third New International Dictionary."]
>
> *Horticulture* n. 1 The cultivation of a garden, or the mode of cultivation employed in a garden. 2 That department of the science of agriculture which relates to the cultivation of gardens or orchards, including the growing of vegetables, fruits, flowers, and ornamental shrubs and trees. See synonyms under Agriculture. ["Funk & Wagnalls Standard Dictionary."]

The sprouting of seeds in the imported trays falls within the common meaning of the term horticulture.

In *United States* v. *S. S. Perry*, 25 CCPA 282, T.D. 49395 (1938), certain celluloid poultry leg bands, which were used for identification purposes, were held to be implements. The court therein held that the term implement should be given a broad meaning and is not limited to or synonymous with a tool or utensil. In *Border Brokerage*, *supra*, the court held that certain plastic planting bullets, used for propagating trees, both of the crop type and of the ornamental type, were agricultural implements. The court therein, in reviewing the changes made from the Tariff Act of 1930 to the TSUS in 1962, noted the elimination of the distinction between agricultural and horticultural purposes.

Under the foregoing it is apparent the sprouting trays involved are horticultural implements entitled to entry free of duty under item 666.00, TSUS, as claimed.

Judgment will be entered accordingly.

(Slip Op. 81–17)

ELIZABETH RIVER TERMINALS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 75–10–02534

Ship Repairs

A barge purchased by the plaintiff for use as a crane platform was towed to Canada for repairs. Upon return to the United States

it was assessed with ship repair duties under section 466(a), Tariff Act of 1930, as amended (19 U.S.C. 1466(a)). The barge was held to be a vessel and not entitled to the limited exemption from assessment of duties in section 1466(e).

FOREIGN REPAIRS TO U.S. VESSEL

The cost of repairs made in a foreign port to the barge, *Cambria*, was assessed by Customs officials at the rate of 50 per centum ad valorem under 19 U.S.C. 1466(a). Under that provision repair duties are levied upon all vessels documented under the laws of the United States to engage in foreign or coasting trade, unless exempt by 19 U.S.C. 1466(e).

VESSELS—DEFINED UNDER CUSTOMS LAWS

In determining whether watercraft are vessels, the test includes whether they are instrumentalities of commerce as opposed to *articles* of commerce. *United States* v. *Seagull Marine*, 67 CCPA——, C.A.D. 1251, —— F. 2d —— (1980).

CUSTOMS DUTIES—STATUTORY CONSTRUCTION—LEGISLATIVE INTENT

19 U.S.C. 1466(a) provides for assessment of duties on ship repairs made in a foreign country. 19 U.S.C. 1466(e), added January 5, 1971, provides for a limited exemption from such assessment under certain conditions. In determining whether the cost of repairs statute applies to barges, the legislative history of 19 U.S.C. 1466 (a) and (e) indicates that Congress intended repairs on barges undertaken in a foreign country to fall within section 1466(a) unless the conditions set out in section 1466(e) are met.

[Judgment for defendant.]

(Decided February 26, 1981)

Vandeventer, Black, Meredith & Martin (*G. W. Birkhead* at the trial and on the briefs) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Madeline B. Kuflik* at the trial and on the brief), for the defendant.

RE, Chief Judge:

In this action, plaintiff sues to recover duties assessed on the cost of repairs made in a foreign country to its barge, the *Cambria*. The repairs, on which duties were assessed and which plaintiff seeks to have refunded, were made in Montreal, Quebec, Canada, in 1973.

Plaintiff, Elizabeth River Terminals, Inc., operates a dry bulk cargo facility. In its operation, plaintiff loads and unloads deepwater vessels, stores dry bulk materials and handles scrap metal for export.

The *Cambria* was purchased by the plaintiff on July 9, 1973, for use as a crane platform moored at its place of business in Norfolk, Va. Earlier, the *Cambria* was a self-propelled Great Lakes ore carrier. In 1968, it was dropped from classification as an ore carrier, and the

engines were deactivated. From 1968 until its purchase by plaintiff, the *Cambria* was moored to the shore in Milwaukee, Wis., and was used for loading, unloading, and holding scrap.

After the plaintiff purchased the *Cambria*, it was towed from Milwaukee to Montreal for the purpose of making certain repairs. Some of the repairs were necessary for the sea portion of the tow, whereas others were made for its use in Norfolk, Va. In order to permit the voyage from Montreal to Norfolk, Va. the *Cambria* was registered by the U.S. Coast Guard. The *Cambria* was readmeasured as a barge, and certificates of registry and inspection were issued by the U.S. Coast Guard. The certificate of inspection prohibited the carrying of cargo.

After the repairs were made in Montreal, the *Cambria* was towed to Norfolk, Va., where, pursuant to section 466(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1466(a)), duties were assessed on the cost of the foreign repairs. Section 466(a) of the statute provides for a duty of 50 per centum to be assessed on the cost of repairs made in a foreign port on a vessel documented under the laws of the United States to engage, or intended to be employed, in foreign or coasting trade. Subsection (d) of section 466 (formerly subsection (b) and redesignated (d) by Public Law 95–410 (1978)), not in issue in this case, provides for a remission of duties for certain "necessary repairs," i.e., repairs "compelled, by stress of weather or other casualty." *See Suwannee Steamship Co.* v. *United States*, 79 Cust. Ct. 19, C.D. 4708, 435 F. Supp. 389 (1977). On January 5, 1971, subsection (e) (formerly subsection (c) and redesignated (e) by Public Law 95–410 (1978)) was added which provides for an exemption from duties for "any vessel designed and used primarily for purposes *other than* transporting passengers or property in the foreign or coasting trade" if certain specific criteria are met. [Italic added.]

Plaintiff does not dispute the amount of the duties assessed, but contends that, under this court's holding in *Corpus Co.* v. *United States*, 69 Cust. Ct. 170, 176, C.D. 4390, 350 F. Supp. 1397, 1402 (1972), appeald ismissed, 60 CCPA 185 (1973), "[w]here a vessel does not engage in trade, is not intended to engage in trade, and indeed is physically incapable of engaging in trade, its repairs are not dutiable under section 466."

Although a certificate of registry was issued, plaintiff nevertheless asserts that the *Cambria* was not used in the foreign or coastingtrade, and was not intended for such use. Hence, it contends that the duties imposed by section 466(a) of the Tariff Act of 1930, as amended, do not apply. It adds that since the *Cambria* was used as a shore facility affixed to the pier in Milwaukee, and was intended to be affixed to the pier in Norfolk, clearly, it should be controlled by the decision in the *Corpus* case which dealt with vessels engaged exclusively in ocean-

ographic research. Plaintiff states that "the *Cambria* not only passes the *Corpus* test, but goes further [as] [t]he *Cambria* was arguably not even a vessel, but a floating platform or derelict." Plaintiff claims that, as a crane platform, the *Cambria* is not dutiable under section 466 which is intended to include only documented vessels.

The defendant disagrees, and maintains that the duties were properly assessed upon the repairs performed in Montreal on a vessel documented under the laws of the United States. First, defendant maintains that the congressional intent underlying section 466 is to assist and protect American shipyards and labor from the competition of foreign shipyards and that this is a longstanding policy with national defense implications. Second, defendant contends that with the addition of subsection (e) to section 466 in 1971, Congress made it clear that "any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade," is subject to duties for foreign repairs unless the specific statutory criteria for exemption are met. Third, defendant contends that at the time the foreign repairs were performed upon the *Cambria*, it was a vessel documented under the laws of the United States to engage in foreign or coasting trade. It also contends that the fact documentation was required to transport the *Cambria* to Montreal for the purpose of repairs does not exempt the *Cambria* from the provisions of section 466(a). Defendant maintains that the action by the plaintiff, in transporting the barge to a foreign port for repairs to be performed in a foreign shipyard with foreign labor and materials, is equivalent to an intent to engage in foreign trade within the meaning of section 466(a) (19 U.S.C. 1466(a)). Finally, defendant stresses that the *Corpus* decision interpreted and applied section 466 of the Tariff Act of 1930 as it read prior to the 1971 amendment and the addition of subsection (e).

At the outset, plaintiff's claim depends upon whether the *Cambria* is a vessel within the intendment of 19 U.S.C. 1466(a), and therefore subject to the customs duties for foreign repairs. Plaintiff indicates that if the *Cambria* is not a vessel, it would not be subject to the imposition of duties, and plaintiff would be entitled to judgment in its favor.

The statutory definition of vessel, in the Tariff Act of 1930, as amended, is found in 19 U.S.C. 1401, which provides that:

> (a) The word "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

It is also pertinent that the heading of section 3 of 1 U.S.C. (Rules of Construction) states the following:

> "Vessel" as including all means of water transportation.

These provisions expressly state that "vessel" encompasses "every description of water craft or other contrivance *used, or capable of being used,* as a means of transportation in water," "including *all* means of water transportation." [Italic added.] Numerous cases have interpreted the meaning of the word "vessel." See *The Conqueror*, 166 U.S. 110, 17 S. Ct. 510 (1897); *United States* v. *Seagull Marine*, 67 CCPA ——, C.A.D. 1251, —— F.2d —— (1980). See also *Hitner Sons Co.* v. *United States*, 13 Ct. Cust. Appls. 216, T.D. 41175 (1925). *Cf. United States* v. *Bethlehem Steel Co.*, 53 CCPA 142, C.A.D. 891 (1966) (midbodies), *cert denied*, 386 U.S 912 (1967); *Todd Shipyards Corp.* v. *United States*, 63 Cust. Ct. 165, C.D. 3891 (1969) (midbodies).

An examination of some early cases reveals that a barge without power of self-propulsion was held to be a vessel, and therefore subject to the navigation laws. *Disbrow* v. *The Walsh Bros.*, 36 F. 607 (S.D.N.Y. 1888). A similar holding is found in *The Old Natchez*, 9 F. 478 (C.C.S.D. Miss. 1881), in which an old dismantled hull of a river steamboat, being refitted for use as a wharf boat in loading passengers and merchandise, was held to be a vessel.

In *Hitner Sons Co.* v. *United States*, 13 Ct. Cust. Appls. 216, T.D. 41175 (1925), a former Canadian armored cruiser was classified as manufactures of metal, and although originally designed and intended for use as a means of transportation in water, its substantial structural alteration rendered the design useless as a means of transportation in water. Hence it was held not to be a vessel.

In the present case, the evidence offered by the plaintiff is that the *Cambria* had originally been used as an ore carrier and later as a barge used as a crane platform. It had undergone no major structural alterations as had the cruiser before the courtin the *Hitner* case. Although there was testimony to the effect that the *Cambria* had been permanently moored at a scrap terminal, prior to plaintiff's purchase, the record leaves no doubt that it is a barge capable of being towed from its moorings in Milwaukee without any difficulty. The voyages undertaken clearly refute plaintiff's assertion of a permanent mooring. Regardless of any permanent mooring, the *Cambria* is a barge capable of being used as a means of transportation, and its therefore a vessel within the meaning of the pertinent provisions of law.

The authorities teach that the term "vessel" includes all types of watercraft or contrivance that can be used as a means of transportation in water. The test is not merely size and structure, or self-propulsion, but rather capability and design to serve as a means of transportation in water. *In United States* v. *Seagull Marine*, 67 CCPA——, C.A.D. 1251, —— F. 2d —— (1980), which dealt with the duty-free treatment

accorded vessels by the tariff laws, the Court of Customs and Patent Appeals recently expressed the following:

> As seen in 1. U.S.C. 3, supra, the definition of the term "vessel" is quite broad. However, judicial precedent has limited the definition of "vessel" for tariff purposes and has established that not every watercraft meeting the bare terms of the definition is entitled to entry into the United States duty free. In particular, the scope of the term "vessel" has been narrowed to limit duty-free treatment to watercraft that are *instrumentalities* of commerce as opposed to *articles* of commerce. [Citations omitted.] [Italic in original.]

From the broad language of the pertinent statutes and the authorities examined, it is the determination of the court that the *Cambria*, when it entered into the Port of Norfolk, was a vessel within the meaning of the foreign repairs statute, 19 U.S.C. 1466. It was documented under the laws of the United States, and was capable to being used as a means of transportation in water. Under the reasoning of the *Seagull Marine* case, it was an instrumentality of commerce rather than an article of commerce. There is no question that it had been designed and intended for use as a means of transportation in water. Furthermore, there is no evidence that it had undergone any major structural alterations to change this primary purpose or capability.

It is also pertinent that the Customs Regulations, contained in 19 C.F.R. 4.0 preceding the provisions pertaining to "Arrival and Entry of Vessels," read in part as follows:

> (a) The word "vessel" includes every description of watercraft or other contrivance used or capable of bing used as a means of transportation on water, but does not include aircraft. (19 U.S.C. 1401.)
>
> (b) The term "vessel of the United States" means any vessel documented under the laws of the United States.
>
> (c) The term "documented" means registered, enrolled and licensed, or licensed by the U.S. Coast Guard.

Having concluded that the *Cambria* is a documented vessel within the intendment of 19 U.S.C. 1466(a), the question presented is whether the repairs made on the *Cambria* in Montreal were properly subject to assessment of duties under the terms of the statute at the time that the repairs were made in 1973. The court has concluded that they were, and that the *Cambria* did not qualify for the exemption provided for in subsection (e).

In pertinent part, 19 U.S.C. 1466(a) reads as follows:

> § 1466. Equipment and repairs of vessels.
>
> (a) Vessels subject to duty; penalties.
>
> The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the *expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States* to engage in the foreign

> or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country; * * *. (Italic added.)

Subsection (e) added on January 5, 1971, provides:

> (e) Vessels used primarily for purposes other than transporting passengers or property in the foreign or coasting trade. In the case of *any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade* which arrives in a port of the United States 2 years or more after its last departure from a port of the United States, the duties imposed by this section shall apply only with respect to (1) fish nets and netting, and (2) other equipments, and parts thereof, and repair parts and materials purchased, or repairs made, during the first 6 months after the last departure of such vessel from a port of the United States. (Italic added.)

In summary, plaintiff invokes the doctrine of stare decisis, and contends that *Corpus Co.* v. *United States*, 69 Cust. Ct. 170, C.D. 4390, 350 F. Supp. 1397 (1972), is authority for the proposition that the *Cambria* is not subject to the assessment of duties pursuant to 19 U.S.C. 1466(a).

The issue, as presented in the *Corpus* case, was whether foreign repairs on oceanographic research vessels documented to engage in foreign trade, but not capable of engaging in foreign trade, were properly subject to assessment of duties under the terms of section 466 of the Tariff Act of 1930, in effect prior to January 5, 1971. In *Corpus* the court decided that "[w]here a vessel does not engage in trade, is not intended to engage in trade, and indeed is physically incapable of engaging in trade, its repairs are not dutiable under section 466." 69 Cust. Ct. at 176.

In *Corpus*, the foreign repairs were made during the period of 1966–1969, and the court expressly stated that duties had been imposed under section 466 of the Tariff Act of 1930 "in effect prior to January 5, 1971." Id. at 171. Clearly, therefore, as indicated by the defendant, the decision in *Corpus* was in interpretation and application of the language of section 466 before the 1971 amendment. In *Corpus*, the court examined prior decisions, and concluded that the pertinent cases closely scrutinized the actual and intended use of the vessel in derermining whether the cost of foreign repairs was dutiable under the statute prior to the 1971 amendment. Consequently, it cannot be asserted that *Corpus* is dispositive of the present case which involves foreign repairs made on the *Cambria* in 1973 after the enactment of subsection (e) to section 466 in 1971.

In the present case, the question presented centers on the interpretation and application of section 466 subsequent to the 1971

amendment by the addition of subsection (e) to the statute. Since the operative facts in *Corpus* occurred prior to the date of enactment of subsection (e) of the statute, and the meaning or effect of that subsection was not before the court, its holding is not stare decisis in the case at bar. *See Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 120, 179 (1821). As expressly stated in *Corpus*, and as indicated by defendant, the court interpreted and applied the ship repair statute as it existed prior to the addition of subsection (e). In the present case, the court must interpret and apply section 466 of the statute with the 1971 addition of subsection (e).

It cannot be denied that the court must interpret a statute in a manner that will carry out or effectuate the congressional intent. *United States* v. *Gulf Oil Corp.*, 47 CCPA 32, 35, C.A.D. 725 (1959). In ascertaining congressional intent, the court may refer to the legislative history of a statutory enactment, and need not limit its inquiry to a mere reading of the words of the statute. *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543–544, 60 S. Ct. 1059, 1063–1064 (1940). *See Train* v. *Colorado*, 426 U.S. 1, 9–10, 96 S. Ct. 1938, 1942 (1976). Clearly statutes are to be read in pari materia, and all subsections must be read in order to glean the legislative intent and animating purpose.

Subsection (a) of 19 U.S.C. 1466 provides for the assessment of duties upon repairs made in foreign ports to vessels documented under the laws of the United States to engage, or intended to be employed, in the foreign or coasting trade. Subsection (e) provides, in material part, that for vessels designed and primarily used for purposes other than transporting passengers or property in the foreign or coasting trade, the duties imposed by section 1466(a) shall only apply to certain materials and repairs made within 6 months after departure from the United States, and when the vessels have not been in a U.S. port for 2 years or more. It is clear that subsection(a) provides for the assessment of duties, and subsection (e) provides for a limited exemption from the assessment under certain specific conditions.

The enactment of subsection (e) in 1971 was intended to relieve certain vessels from the duties imposed in subsection (a). The legislative history of the 1971 enactment (Public Law 91–654 (1971)) states the following:

> EXPLANATION OF COMMITTEE AMENDMENT
>
> Present law requires the imposition of a 50-percent duty on the value of repairs made on, and equipment purchased for, U.S. vessels engaged in foreign trade, when such repairs or equipment were made or purchased in a foreign country. The House bill would have exempted shrimp vessels from this duty.

> The committee agrees with the House as to the desirability of this exemption but feels it *should be limited* to those instances where the vessel is abroad for extended periods of time and is not in need of repairs when it departs from this country.
>
> In addition, the committee agrees with a recommendation of the Treasury Department that the relief from tariffs provided by this bill should be extended to noncargo carrying "special purpose" vessels.
>
> * * * * * * *
>
> This amendment is intended to relieve from a 50-percent ad valorem tax on the value of repairs made, and equipment purchased, in foreign countries, those American shrimp and other vessels which must be away from U.S. ports for extended periods of time and which during the course of that time must make normal repairs if they are to remain competitive with their foreign counterparts. The amendment would not adversely affect American shipyards or American labor since *these vessels would have to be in foreign or international waters for 2 years or more in order to be relieved from payment of the duty*, and could not in any event be repaired in U.S. shipyards during their voyages. Besides shrimp boats, the amendment would apply only to "special service vessels," such as *barges*, oil drilling vessels, oceanographic vessels, which, like shrimp boats, in the course of their operations, cannot return to U.S. ports to secure the necessary repairs, without great inconvenience. (Italic added.)
>
> S. Rept. No. 91–1474, 91st Cong., 2d Sess., reprinted in [1970] U.S. Code Cong. & Ad. News 5910–5911.

From the statutory language, as well as the legislative history, it is plain that Congress intended to exempt from duties only those foreign repairs made on special service vessels, such as barges, which meet the conditions set forth in 19 U.S.C. 1466(e). Clearly, Congress entertained no doubt that barges are vessels within the meaning of the statute. Indeed, in the "Explanation of Committee Amendment," barges are expressly mentioned as illustrations or examples of special service vessels.

In providing for the exemption, Congress manifested its understanding and intent that the special service vessels were subject to the duties imposed by section 1466(a); otherwise, there would have been no reason to amend section 466 of the Tariff Act of 1930 by including the exemption found in the present subsection (e).

The legislative history makes it clear that section 1466(e) was intended to relieve certain vessels from the duties imposed by section 1466(a), and that the newly granted relief was conditioned upon the prescribed prerequisites; i.e., that the repairs were made after the first 6 months of a vessel's voyage in foreign or international waters, and that the vessel's voyage in those waters last at least 2 years without the vessel returning to a U.S. port.

The *Cambria* was an ore and steel carrier which was later used as a

barge upon which cranes were mounted. There is no doubt that the *Cambria* is a barge, and that it does not meet the specific conditions required by section 1466(e) for exemption from the foreign repair duties. Although it is used for purposes other than transporting passengers or property, it is nonetheless a special service vessel used as an instrumentality of commerce within the intendment of the statute. The functions of the *Cambria* were directly and solely related to the foreign and coasting trade. It served the operations of the plaintiff by the use of its cranes to load and unload cargo from deepwater vessels, and by the storing of dry bulk material and scrap for export.

It cannot be questioned that by virtue of its certificate of registry the *Cambria* was a vessel documented under the laws of the United States to engage in the foreign or coasting trade. As a seagoing barge, it was issued a certificate of registry and was required to be inspected by the Coast Guard. It is also significant that as a documented vessel it enjoyed the protection of the laws of the United States.

To accept plaintiff's interpretation of section 1466 would mean that, in 1971, by enacting subsection (e), Congress enacted a subsection which, for special service vessels, either repeated or contradicted subsection (a) since, according to plaintiff's reading of the statute, special service vessels like the *Cambria* were not and are not subject to the duties provided for in subsection (a). Such a meaning would do violence to the basic principle of statutory interpretation and application that a court should give effect to all provisions of a statute. It cannot adopt a meaning which would render a section or subdivision of a statute a mere redundancy. See *Jarecki* v. *G. D. Searle & Co.*, 367 U.S. 303, 307–308, 81 S. Ct. 1579, 1582 (1961). Moreover, as stated by the U.S. Court of Customs and Patent Appeals, in construing different parts of a tariff act which appear to be in conflict it is the court's function to harmonize them so as to give each of them meaning, and achieve a result which was reasonably within the legislature's contemplation. *Beaver Products Co., Inc.* v. *United States*, 17 CCPA 434, T.D. 43878 (1930); accord, *United States* v. *Corning Glass Works*, 66 CCPA 25, C.A.D. 1216, 586 F. 2d 822 (1978); see also *Weinberger* v. *Hynson, Westcott & Dunning*, 412 U.S. 609, 631, 93 S. Ct. 2469, 2484 (1973). By interpreting 19 U.S.C. 1466 (a) and (e) so that special service vessels are subject to the duties provided for in subsection (a) unless they meet the specific conditions set forth in subsection (e), the court is implementing the stated congressional intent, and also avoids any conflict between the two subsections of the statute.

It is argued that the interpretation suggested by defendant, and accepted by the court, imposes an unnecessary hardship upon certain vessels. The question, however, is one of legislative policy. It is

within the prerogative of the Congress to determine whether vessels are to be subject to the imposition of foreign repair duties, and under what circumstances those duties are not to be imposed or remitted. See *Erie Navigation Co.* v. *United States*, 83 Cust. Ct. 47, C.D. 4820, 475 F. Supp. 160 (1979).

The legislative history of 1466 (a) and (e) indicates clearly that Congress intended the exemption from duties contained in subsection (e) to be limited, and that Congress intended and understood that barges were subject to the imposition of duties prescribed by subsection (a) as modified or limited by the specific provisions of subsection (e). On the evidence presented the *Cambria* did not qualify for the exemption provided for in 19 U.S.C. 1466(e) from the assessment of the duties imposed pursuant to the provisions of 19 U.S.C. 1466(a).

In view of the foregoing, it is the determination of the court that the *Cambria* was properly subject to duties for vessel repairs made in a foreign country pursuant to 19 U.S.C. 1466(a). Since the duties at issue were properly assessed, plaintiff's action for their recovery must fail.

Judgment will issue accordingly.

(Slip Op. 81–18)

THE BUDD COMPANY, RAILWAY DIVISION, PLAINTIFF *v.* THE UNITED STATES, DEFENDANT; NISSHO-IWAI AMERICAN CORPORATION AND KAWASAKI HEAVY INDUSTRIES, LTD., INTERVENORS, PARTIES-IN-INTEREST AND BREDA COSTRUZIONI FERROVIARIE, S.P.A., INTERVENOR, PARTY-IN-INTEREST

Court No. 80–3–00505

Opinion and Order

[Application of plaintiff for preliminary injunction, denied.]

(Dated February 26, 1981)

Barnes, Richardson & Colburn (*Andrew P. Vance* and *Raymond F. Sullivan, Jr.* at the oral argument and on the briefs) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *David M. Cohen*, Director, International Trade Field Office, Commercial Litigation Branch (*Francis J. Sailer* at the oral argument and on the briefs), for the defendant.

Arent, Fox, Kintner, Plotkin & Kahn (*Stephen L. Gibson* and *Evan R. Berlack* at the oral argument and on the briefs) for Nissho-Iwai American Corporation and Kawasaki Heavy Industries, Ltd., intervenors, parties-in-interest.

Bosco & Curry (*Joseph A. Bosco* at the oral argument) for Breda Costruzioni Ferroviarie, S.p.A., intervenor, party-in-interest.

BOE, Judge:

Plaintiff has filed its application for preliminary injunction seeking to enjoin the defendants herein, their officers, agents, servants, and employees, and specificaliy the U.S. Customs Service and the employees thereof, from liquidating any and all entries or withdrawals from warehouse for consumption of parts and components of rail passenger cars imported from Japan and Italy pursuant to the contracts which are the subject of the preliminary determination by the International Trade Commission, presently under review, during the pendency of the litigation in this court and its appellate tribunals.

In requesting this provisional relief, the plaintiff predicates its right thereto under 28 U.S.C. 2643(c)(1) as enacted by the Customs Courts Act of 1980, providing:

> (c)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

The defendant and the intervenors herein contest plaintiff's application asserting: (1) That the requested injunctive relief is precluded by the statutory provisions governing liquidation of entries, and the suspension thereof, pending litigation, contained in 19 U.S.C. 1516a, as amended by the Trade Agreements Act of 1979; (2) that the suspension of liquidation at this time would be contrary to the antidumping statutes and to the obligations of the United States under the International Antidumping Code; (3) the requisite criteria for preliminary injunctive relief herein has not been demonstrated by the plaintiff.

This court cannot agree that, with respect to the instant proceedings and the application for injunctive relief herein, the provisions of 19 U.S.C. 1516a are exclusive or that the same limit the circumstances under which liquidation may be suspended only to an affirmative preliminary determination by the administering authority as provided by 19 U.S.C. 1673b(d)(1). It is indeed recognized that by the enactment of the Trade Agreements Act of 1979, Congress endeavored to provide a pattern and schedule in antidumping proceedings to permit the orderly determinations of material injury by the International Trade Commission as well as the determination of the existence of less than fair value sales by the administering authority. It is likewise recognized that injunctive relief was for the first time provided for therein with specificity both as to the appropriate occasion for the granting of such relief as well as the criteria requisite therefor.

However, the statutory provisions of 28 U.S.C. 2643(c)(1), as enacted by the Customs Courts Act of 1980, when read in context with 19 U.S.C. 1516a, as enacted by the Trade Agreements Act of 1979, can only serve to emphasize the congressional intent to confer upon the U.S. Court of International Trade remedial powers, co-extensive with the powers of the U.S. District Courts and, accordingly, to grant to the Court of International Trade expanded injunctive power and authority, appropriate in a civil action. In short, if extraordinary circumstances so warrant, the equitable power granted by the provisions of section 2643(c)(1) may be exercised by this court in order to secure the relief which may be necessary and proper, notwithstanding the fact that more restrictive provisions originally may have been provided in prior statutory enactments.

The defendant and the intervenors have cited the case of *Haarman & Reimer Corporation* v. *United States*, 1 CIT ——, Slip Op. 81–13 (Feb. 3, 1981), as supportive of their contention that the provisions of 19 U.S.C. 1516a are exclusive and thereby restrict the exercise of the injunctive powers granted to the Court of International Trade by 28 U.S.C. 2643(c)(1).

The decision of this court in *Haarman & Reimer*, *supra*, is deemed inapplicable to the instant proceeding. In that decision this court concluded that 28 U.S.C. 1581(i), under which statute the plaintiff therein sought to predicate its action for judicial review of a preliminary negative determination by the administering authority that critical circumstances did not exist, conferred a residual grant of jurisdictional authority only and was not intended by the Congress to create a new cause of action. See H. Rept. No. 96–1235, 96th Cong., 1st sess. 47. This court further concluded therein that the legislative history with respect to section 1581(i) explicitly and clearly confirmed the congressional intent to designate 19 U.S.C. 1516a as the exclusive statutory authority for the judicial review of the antidumping proceeding in question. See H. Rept. No. 96–1235, supra at 48. In view of the unlikelihood of the plaintiff prevailing on the merits, this court, accordingly, denied the plaintiff's accompanying application for a preliminary injunction.

In the instant proceeding, on the other hand, the plaintiff, having instituted in this court its action for judicial review of a preliminary negative determination by the International Trade Commission with respect to material injury or a threat thereof pursuant to 19 U.S.C. 1516a, now has requested this court to exercise the plenary power and authority granted to it by 28 U.S.C. 2643(c)(1) to provide provisional relief in the form of a preliminary injunction. This equitable power so conferred upon the U.S. Court of International Trade necessarily must be distinguished from the residual grant of jurisdictional

authority provided by 28 U.S.C. 1581(i), which was the subject of consideration by this court in the *Haarman & Reimer* decision, *supra*. Again, the House Report to the Customs Courts Act of 1980, supra, explicitly enunciates the congressional intent in the enactment of section 2643 and subsection (c)(1) thereof:

> Subsection (c)(1) is a *general grant of authority for the Court of International Trade to order any form of relief that it deems appropriate under the circumstances*. It is the committee's intent that this authorization be deemed to grant the Court of International Trade remedial powers coextensive with those of a Federal district court. This provision makes it clear that the court may issue declaratory judgments, writs of prohibition and mandamus, orders of remand, and preliminary or permanent injunctive relief, except as provided in paragraphs (2), (3), and (4) of this subsection.
>
> In the Trade Agreements Act of 1979, Congress, for the first time, authorized the Customs Court, renamed by this bill the Court of International Trade, to issue injunctive relief in limited circumstances. Subsection (c)(1) *expands the circumstances under which the court may* order injunctive relief. When a party requests the court to grant injunctive relief, the court is to be guided by the same factors utilized by a Federal district court when it considers a request for a preliminary or permanent injunction. [Italic supplied.] At 61.

In the opinion of this court, therefore, the application of the plaintiff for injunctive relief in the instant proceeding pursuant to the provisions of 28 U.S.C. 2643(c)(1) is properly before this court and within its power and authority to consider. Accordingly, the sole question remaining to be resolved herein is whether the plaintiff has sustained its burden of establishing the criteria requisite to the granting of its requested injunctive relief.

One of the most important factors to be considered in determining whether a preliminary injunction may be warranted is the significance of the threat of irreparable injury to plaintiff if the injunction is not granted.

The standard of irreparable injury is not restricted alone to proceedings seeking injunctive relief. It is a well-established principle that without a clear showing of irreparable injury failure to exhaust administrative remedies will serve as a bar to judicial intervention in the administrative process. *Renegotiation Board* v. *Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974).

It appears that the plaintiff predicates the cause of its alleged irreparable injury upon the delay occasioned by the defendant resulting in a protracted judicial review proceeding. This court is in agreement that the time which has elapsed since the submission of plaintiff's original petition to the Secretary of the Treasury in October 1979 requesting an investigation of less than fair value sales thwarts the

intent of Congress to provide a speedy review of administrative determinations. More than 1 year has elapsed since the preliminary negative determination of the International Trade Commission was made on February 11, 1980. All of the litigants herein may be said to share in the ensuing delay. Needlessly, the parties have permitted themselves to become encumbered in a procedure on review, ill designed to afford the expeditious presentation of the issues to this court.

To predicate a claim for irreparable injury occasioned by a delay in the review process, which well could have been foreseeable, controlled or prevented, cannot be deemed an injury of the character sufficient to justify the exercise of the extraordinary provisional authority of this court.

The nature and extent of irreparable injury requisite to injunctive relief has been aptly delineated in Wright and Miller, "Federal Practice and Procedure; Civil" section 2948, at 436–38:

> There must be a likelihood that irreparable harm will occur. Speculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant. Thus, a preliminary injunction will not be issued simply to prevent the possibility of some remote future injury. A presently existing actual threat must be shown. However, the injury need not have been inflicted when application is made or be certain to occur; a strong threat of irreparable injury before trial is an adequate basis. A long delay by plaintiff after learning of the threatened harm may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction.

Nor has the plaintiff presented to this court any showing with respect to the extent of the actual irreparable injury to which it may be subjected, if the injunctive relief requested is not granted. Other than a reference made during oral argument as to the delivery dates of imported parts and components contemplated in the three contracts in question, no showing has been made whether any parts in fact have been imported, the extent of such importations or the actual effect and injury caused thereby to the plaintiff.

The plaintiff contends that it is not his burden to bring forward such evidence in that the pertinent information would be solely within the custody and control of the defendant and the intervenors. This court, however, is not convinced that such an abdication of responsiblity by the plaintiff, as the moving party, can be accepted in light of the extensive discovery procedures available in this court. See McCormick on Evidence 787, at note 19.

A showing of injury, a requisite for the granting of injunctive relief, is also the subject of a determination concerning which the International Trade Commission is charged by statute to consider in its preliminary determination. The preliminary negative determination

with respect to material injury, previously made by the Commission, has neither been affirmed, rejected, modified nor altered in any form by this court upon its review thereof. The order of this court under date of December 29, 1980, remanding the administrative proceedings to the Commission for further consideration of certain information, particularly contained in the administrative record, calls upon that administrative body to amplify its findings of fact so as to enable this court to more fully understand upon review the reasons and the rational basis upon which the Commission's determination was made. Whether the imported parts in question may represent sales at less than fair value, in like manner, is a determination concerning which the administering authority is charged to consider in its subsequent preliminary determination.

Accordingly, in the absence of an actual and specific showing of the irreparable damage and harm either presently affecting or threatening to affect the plaintiff, its present application for injunctive relief, in the opinion of this court, should properly be denied, and the administrative process relating to the determination of the criteria, which the plaintiff has been unable to factually demonstrate in its present application, be allowed to continue without delay or interruption by judicial intervention.

Now therefore, it is hereby

ORDERED that the application of the plaintiff for a preliminary injunction in the above-entitled action be and is hereby denied.

(Slip Op. 81–19)

ZENITH RADIO CORPORATION, PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 80–5–00861

On Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross-Motion for Summary Judgment

[Plaintiff's motion denied and defendant's motion granted in part and denied in part.]

(Decided February 27, 1981)

Frederick L. Ikenson and *Philip J. Curtis* for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General (*David M. Cohen*, Director, Commerical Litigation Branch, on the briefs), for the defendant.

MALETZ, Judge:

Plaintiff, a domestic manufacturer of television sets, brought this action challenging as unlawful certain settlement agreements into

which the United States had entered on April 28, 1980, with various importers of television sets from Japan. As a first cause of action, the complaint alleges that the settlement was not authorized by statute. Alternatively, as a second cause of action, the complaint alleges that even assuming the existence of statutory authority for the settlement, the Government officials who recommended and determined that the claims should be settled acted arbitrarily, capriciously, in bad faith and unlawfully. It is undisputed that by virtue of 28 U.S.C. 1581(i)—which was provided for by the Customs Courts Act of 1980 (94 Stat. 1727)—this court has jurisdiction to entertain the action.

Plaintiff has moved for partial summary judgment on its first cause of action and defendant has cross-moved for summary judgment on the entire case.[1]

The background facts are as follows: On March 10, 1971, the Secretary of the Treasury issued a finding of dumping of television sets from Japan, thereby making such sets subject to antidumping duties.[2] T.D. 71–76, 36 F.R. 4597 (1971). From the date of this finding through 1979, most of these duties were not collected. On March 28, 1980, the Secretary of Commerce[3] announced an administrative review of the dumping finding (45 F.R. 20511), as required by section 751 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. 1675).[4] On April 28, 1980, prior to the completion of this administrative review, the Secretary of Commerce settled all claims for antidumping duties arising from entries of the sets from July 1, 1973, to March 31, 1979. Plaintiff then filed this action challenging the lawfulness of this settlement.

Against this background, we consider plaintiff's motion for partial summary judgment on its first cause of action.[5] Specifically, plaintiff contends that the settlement is not authorized by section 617 of the

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[1] Plaintiff's motion for partial summary judgment was originally filed as a cross-motion to defendant's motion to dismiss for lack of jurisdiction, and defendant's cross-motion for summary judgment was originally filed as a cross-cross-motion. Since defendant's motion to dismiss was rendered moot by the passage of the Customs Courts Act of 1980, the present motions are referred to as "plaintiff's motion for partial summary judgment" and "defendant's cross-motion for summary judgment."

[2] The Secretary of the Treasury's dumping finding was made pursuant to sec. 201(a) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(a)), an enactment which was repealed by the Trade Agreements Act of 1979, Public Law 96-39, title I, section 106(a), 93 Stat. 193. However, pursuant to sec. 106(a) of the Trade Agreements Act of 1979, this dumping finding remained in effect.

[3] The Secretary of the Treasury's responsibility to administer antidumping matters has been transferred to the Secretary of Commerce by Reorganization Plan No. 3 of 1979, sec. 5(a) (1) (C), 44 F.R. 69273 (1979).

[4] Sec. 751 requires the Secretary to conduct a periodic review and determination of antidumping duties.

[5] Previously, this court concluded "that plaintiff has made out a substantial case on the merits on its alternative second cause of action * * *" and issued a preliminary injunction restraining the implementation of the settlement agreement. *Zenith Radio Corporation* v. *United States*, 1 CIT——, Slip Op. 80-10, p. 7 (Dec. 9, 1980). The court's memorandum and order specifically noted, however, that the decision to issue the preliminary injunction was made "without reference to plaintiff's first cause of action * * *." Ibid.

Tariff Act of 1930, as amended (19 U.S.C. 1617) and is therefore ultra vires, illegal and void. Section 617 reads as follows:

> Upon a report by a customs officer, U.S. attorney, or any special attorney, having charge of *any claim arising under the customs laws,* showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury. [Italic added.][6]

According to plaintiff, section 617 only authorizes the settlement of liquidated cliams for antidumping duties.[7] In this connection, plaintiff observes—correctly—that the legislative history of section 617 is essentially silent. However, in support of its position that section 617 authorizes only the settlement of liquidated claims for duties, plaintiff relies heavily upon the history of Rev. Stat. 3469 which was repealed in 1978. See 92 Stat. 2679.

Rev. Stat. 3469 at the time relevant here read as follows:

> Upon a report by a district attorney, or any special attorney or agent having charge of *any claim in favor of the United States* showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon the terms so offered, and upon the recommendation of the solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. * * * [Italic added.]

Based on the similarity of language between the two provisions, plaintiff argues that section 3469 was the precursor of section 617 and therefore that the case law and administrative construction of section 3469 apply for the most part to section 617.

As for case law, plaintiff relies on *United States* v. *George*, 25 F. Cas. 1277 (C.C.S.D.N.Y. 1869) which, it says supports its position that section 617 authorizes only the settlement of liquidated claims. In *George*, certain informers claimed entitlement to a portion of sums that were paid to the Government under a compromise agreement. The informers contended that the sums constituted fines or penalties in which they had a right to share. The Government on the other hand argued that since the funds were paid by way of compromise under section 10 of the Act of March 3, 1863, 12 Stat. 740—which was a virtually identical predecessor provision to section 3469—such funds were duties and that the informers therefore were not entitled

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[6] The Secretary of the Treasury's function under sec. 617 have been transferred to the Secretary of Commerce, insofar as those functions relate to the settlement of claims for antidumping duties. Reorganization Plan No. 3 of 1979, supra, section 5(a)(1)(G).

[7] Liquidation is the final computation of duties accruing on an entry. See 19 C F R 159.1. Most of the entries which are the subject of the disputed settlement are unliquidated.

to a share thereof. The court rejected the Government's argument and held: (1) That the compromise had no legal effect on the character of the funds and (2) that a portion of the funds constituted fines or penalties in which the informers were entitled to share. Plaintiff emphasizes that the court in *George* added that section 10 "might well be held to confer no power in regard to claims not in suit." 25 F. Cas. at 1279. But this statement was simply dictum which can scarcely be regarded as dispositive of the issue here.

As for administrative construction, plaintiff relies upon various opinions of the Attorney General construing section 10 and its successor section 3469 in which the Attorney General concluded that those provisions were enacted for the benefit of the U.S. revenue and (1) Did not permit the Secretary of the Treasury to exercise indirectly powers which Congress specifically conferred on other agencies; (2) did not authorize the settlement of claims for real property; (3) did not permit hardship to the debtor to be taken into consideration by the Secretary; and (4) did not include the Comptroller of the Treasury as an agent. However, these opinions of the Attorney General have no relevance here.

Equally without merit is plaintiff's assertion in its opening brief that the legislative history of section 3469 shows that that section only authorized the settlement of claims for uncollected judgments. The fact of the matter is that section 3469 is not so limited as plaintiff itself concedes in its reply brief.

Nor is there any legislative history indicating that Congress intended that section 617 be construed in light of the history of section 3469. Section 617 was originally enacted in 1922 (42 Stat. 987) and provided specifically for the settlement of claims arising under the customs laws. Significantly, when section 617 was adopted, section 3469 was neither repealed nor modified and thus continued to provide authority for the settlement of claims other than those arising under the customs laws.

The important point is that the language of section 617 differs in several significant respects from the language of section 3469. For example, section 617 is applicable to "any claim arising under the customs laws," whereas section 3469 pertains to "any claim in favor of the United States." Thus the inescapable conclusion is that in enacting section 617, Congress intended to provide a mechanism for the settlement of claims arising under the customs laws which would be different from the mechanism provided by section 3469. This consideration militates against construing section 617 in accordance with the history of section 3469. For "[w]here * * * words of a later statute differ from those of a previous one on the same or a related subject, the legislature must have intended them to have a different

meaning." *Klein* v. *Republic Steel Corp.*, 435 F. 2d 762, 765–766 (3d Cir. 1970). See also, e.g., *United States* v. *Crocker-Anglo National Bank*, 277 F. Supp. 133, 155 (N.D. Cal. 1967); *Sol Kahaner & Bro.* v. *United States*, 71 Cust. Ct. 97, 102, C.D. 4480, 372 F. Supp. 1393, 1398 (1973), aff'd, 62 CCPA 35, C.A.D. 1141, 509 F. 2d 1186 (1975).

What is more, the language of section 617 is clear and the court is therefore dutybound to interpret the section in accordance with its plain meaning. See, e.g., *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 643 (1978). It is quite true that statutory clarity does not bar a court's consideration of legislative history. See, e.g., *Train* v. *Colorado Pub. Int. Research Group*, 426 U.S. 1, 10 (1976); *Hunt* v. *Nuclear Regulatory Commission*, 611 F. 2d 332, 336 (10th Cir. 1979), cert. denied, 445 U.S. 906 (1980). Nonetheless, the plain language of a statute must prevail in the absence of legislative history clearly indicating that the congressional intent differed from that manifested by the language used. See *United States* v. *Oregon*, 366 U.S. 643, 648 (1961), reh. denied, 368 U.S. 870 (1961); *United States* v. *United States Steel Corp.*, 482 F. 2d 439, 444 (7th Cir. 1973), cert. denied, 414 U.S. 909 (1973). Measured by this standard, absent here is any legislative history indicating that Congress intended section 617 to be given a meaning other than one based on its plain language.

Regarding the plain language, plaintiff argues that the word "claim" as used in section 617 means only claims for liquidated duties, i.e., claims for a sum certain. However, it is axiomatic that a claim by the United States for the appropriate duties arises upon the entry of a shipment of merchandise into the customs territory of the United States. Indeed, imported merchandise may not be released to an importer unless estimated duties or a bond for duties is deposited at the time of entry. 19 U.S.C. 1505.

It is true that the amount of the claim for duties may be uncertain until liquidation occurs. Nevertheless, the claim for duties exists and an importer obtains possession of goods which he imports subject to the claim of the United States.

Here, the importers of television sets covered by the dumping finding obtained the goods but only subject to the claim of the United States for the duties to be ultimately assessed upon liquidation. Thus, the United States possessed a claim against the importers even though the exact amount of the claim had not been fixed through the process of liquidation.[8]

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[8] In its ordinary meaning, the word "claim" is a broad comprehensive word including within its scope "a calling * * * for something due." Webster's Third New International Dictionary of the English Language (1968). A "claim" has been defined for purposes of the Federal Rules of Civil Procedure as "the aggregate of operative facts which give rise to a right enforceable in the courts." *Original Ballet Russe* v. *Ballet Theatre*, 133 F. 2d 187, 189 (2d Cir. 1943). The fact that the exact amount of the claim is not fixed until liquidation is irrelevant to the question of whether a "claim" exists prior to that date.

Alternatively, plaintiff argues that if section 617 is construed as authorizing the settlement of claims prior to the completion of the administrative review required by section 751 of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979 (19 U.S.C. 1675), Congress' purpose in passing the Trade Agreements Act, i.e., the speedy and efficient collection of antidumping duties, would be frustrated. While plaintiff cites no portion of the Trade Agreements Act or its legislative history explicitly stating that it was Congress' intent to limit the scope of section 617, it argues that the passage of that Act impliedly limited the scope of that section.

This court should of course construe section 617 so as to give effect to the section as a whole. *Weinberger* v. *Hynson, Westcott & Dunning*, 412 U.S. 609, 633 (1973); *Certified Color Mfrs. Ass'n* v. *Mathews*, 543 F. 2d 284, 296 (D.C. Cir. 1976). Moreover, it is presumed that in enacting section 751 Congress was aware of its prior enactment of section 617. See, e.g., *Cannon* v. *University of Chicago*, 441 U.S. 677, 696–697 (1979); *In re Vinarsky*, 287 F. Supp. 446, 449 (N.D.N.Y. 1968). And it is also presumed that Congress intended both statutes to be interpreted as fully effective. See, e.g., *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974).

Obviously, these presumptions are not irrebuttable. Nevertheless, repeal of a statute by implication is not favored. *FAA Administrator* v. *Robertson*, 422 U.S. 255, 265 (1975). Further, this court should avoid an interpretation of section 617 rendering it only partially effective. *Certified Color Mfrs. Ass'n* v. *Mathews*, *supra*, 543 F. 2d at 296. Thus sections 617 and 751 are each to be regarded as effective unless there is clear indication that Congress intended otherwise. *FAA Administrator* v. *Robertson*, *supra*, 422 U.S. at 266. Section 751 should therefore not be read to create an implied exception to, or limitation of, section 617 in the absence of a demonstrated repugnancy between the two provisions. *Morton* v. *Mancari*, *supra*, 417 U.S. at 551.

No such repugnancy exists here since the two provisions reflect different congressional concerns and apply to different functions of the Secretary. The purpose of section 617 is to provide the Secretary with the authority to settle claims for duties and to outline the procedures to be followed and the factors to be weighed in the course of determining whether a given claim for duties should be settled. The purpose of section 751 is entirely different.[9] That section

[9] The relevant portions of sec. 751 (19 U.S.C. 1675) read as follows:

(a) *Periodic review of amount of duty.*—
(1) *In general.*—At least once during each 12-month period beginning on the anniversary of the date of publication * * * an antidumping duty order under this title or a finding under the Antidumping Act, 1921, * * * the administering authority (i.e., the Secretary of Commerce), after publication of notice of such review in the Federal Register, shall—

* * * * * * *

(B) review, and determine (in accordance with par. (2)), the amount of any antidumping duty, * * *

* * * * * * *

provides in part that where there has been a finding of dumping, the Secretary shall review and determine the amount of antidumping duty to be assessed by determining the difference between the foreign market value and United States price of the imported merchandise. Upon the request of an interested party, the Secretary must hold a hearing regarding his review and determination of antidumping duties. These procedures are designed to facilitate the speedy assessment of antidumping duties and to provide designated parties a greater role in these determinations. See H. Rept. No. 96–317, 96th Cong., 1st sess. 72 (1979); S. Rept. No. 96–249, 96th Cong., 1st sess. 80–81 (1979). It is to be added that these determinations are subject to judicial review under section 516A of the Tariff Act of 1930, as amended (19 U.S.C. 1516a).

There is no conflict between the procedures required by section 751 and those required by section 617. Under section 617 before the Secretary may settle a claim, he must receive a report from the Government official having charge of the claim showing "the facts upon which [the] claim is based, the probabilities of a recovery and the terms upon which the [claim] may be compromised * * *." Upon receipt of this report, and upon the recommendation of the General Counsel of the Department of Commerce that the claim be compromised, the Secretary may settle the claim. Any person adversely affected by the decision to settle may then seek judicial review of the Secretary's action. Considering that judicial review is thus available and that settlement may expedite the collection of antidumping duties, these procedures do not frustrate the congressional purpose underlying section 751.

In sum, sections 617 and 751 are separate and distinct statutes. Nothing in the terms or the legislative history of section 751 in any way refers or relates to, much less derogates from, the Secretary's authority under section 617. Clearly, had Congress intended that the authority contained in section 617 be modified in any way by the Trade Agreements Act of 1979, it would have so stated. Given these facts, the court cannot agree with plaintiff's contention to the effect

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and shall publish the results of such review, together with notice of any * * * estimated duty to be deposited * * * in the Federal Register.

(2) *Determination of antidumping duties.*—For the purpose of par. (1)(B), the administering authority shall determine—

(A) the foreign market value and U.S. price of each entry of merchandise subject to the antidumping duty order and included within that determination, and

(B) the amount, if any, by which the foreign market value of each such entry exceeds the U.S. price of the entry.

The administering authority, without revealing confidential information, shall publish notice of the results of the determination of antidumping duties in the Federal Register, and that determination shall be the basis for the assessment of antidumping duties on entries of the merchandise included within the determination and for deposits of estimated duties.

* * * * * * *

(d) *Hearings.*—Whenever the administering authority or the Commission conducts a review under this section it shall, upon the request of any interested party, hold a hearing in accordance with sec. 774(b) in connection with that review.

that Congress impliedly limited the scope of section 617 when it enacted section 751 into law.

In view of the foregoing, plaintiff's motion for partial summary judgment on its first cause of action is denied; defendant's cross-motion for summary judgment is granted as to plaintiff's first cause of action and denied without prejudice as to plaintiff's second cause of action for the reasons stated in this court's memorandum and order of December 9, 1980. See note 5, supra.

(Slip Op. 81–20)

INTER PACIFIC CORPORATION, PLAINTIFF *v.* UNITED STATES OF AMERICA; THE SECRETARY OF THE TREASURY; THE COMMISSIONER OF CUSTOMS, U.S. CUSTOMS SERVICE; REGIONAL COMMISSIONER OF CUSTOMS, U.S. CUSTOMS SERVICE, REGION VI; DISTRICT DIRECTOR OF CUSTOMS, U.S. CUSTOMS SERVICE, HOUSTON, TEXAS, AND SANTINI BROTHERS, INC., DEFENDANTS

Court No. 81–2–00206

Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue

MALETZ, Judge:

Upon reading and filing the verified complaint herein together with Motion for Temporary Restraining Order and Preliminary Injunction against the defendants, for the purpose of restraining them from making further charges to the plaintiff and immediately enjoining them from continuing to refuse to release the plaintiff's merchandise from their custody; together with plaintiff's written and oral statements and affidavit in support thereof the court finds that in order to preserve the status quo of the parties the court should exercise its equitable powers.

This order is entered to avoid injury to plaintiff in the form of charges for storage incurred after the institution of this proceeding. Payment of such charges could cause irreparable harm to plaintiff who has submitted, by sworn statement, an inability to pay the amounts defendant state are required to be deposited for release of the subject merchandise and amounts that could otherwise accrue subsequent to the date of this order. A certificate of notice has been filed by plaintiff stating that constructive notice was given to defendant Santini Brothers of the plaintiff's intention to file this action and request a temporary restraining order. Actual notice has been had on the United States. A brief informal conference with counsel for

plaintiff and counsel for defendant United States has been held in the court's chambers this date. This order shall issue without additional prior notice to the parties to establish the status quo pending further proceedings. It appearing to the court that the record supports the plaintiff's request for a temporary restraining order it is therefore,

Ordered:

1. That the defendants named in this action and each of them are hereby temporarily restrained from accruing further charges against the plaintiff for the storage of the merchandise in this action pending a hearing on the plaintiff's motion for a preliminary injunction, and;

2. A certified copy of this order, together with a copy of the summons, verified complaint and other pleadings be supplied forthwith to the U.S. marshal for the earliest possible service on the defendants, for such services not later than 5 p.m. on the 4th day of March 1981, and;

3. The defendants will appear before the Honorable Morgan Ford, Judge of the U.S. Court of International Trade, on March 5, 1981, at 10:30 a.m., or as soon thereafter as counsel may be heard in the U.S. Court of International Trade, One Federal Plaza, New York, N.Y. 10007, and show cause why the aforesaid preliminary injunction should not issue.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 2, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/23	Richardson, J. February 25, 1981	Alltransport, Inc.	78-8-01542	Item 708.89 22.5%	Item 708.80 15%	Wild Heerbrugg Instruments, Inc. v. U.S. (C.D. 4767)	New York Phototubes
P81/24	Boe, J. February 25, 1981	Kyocera International, Inc.	77-12-04806	Item 720.65 $0.37 per substrate (group A items) Item 720.44 25% (group B items)	Item 535.14 15% (group A items) Item 685.90 8.5% (group B items)	Texas Instruments, Inc. v. U.S. (C.D.'s 4810, 4811)	San Francisco Blank ceramic substrates (group A items); metalized ceramic substrates adapted to receive light emitting diodes (LED's) but not adapted to receive an integrated circuit chip (group B items), set forth in schedule attached to decision and judgment

Decision of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/78	Re, C.J. February 25, 1981	Asea Inc.	76-2-00516	Export value	Equal to invoiced unit prices, net packed, as set forth in entries and invoices	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New Orleans Electrical equipment and apparatus

Judgment of the U. S. Court of International Trade in Appealed Cases

FEBRUARY 23, 1981

APPEAL 80–27.—Norman G. Jensen, Inc., a/c Calhoun's Collectors Society, Inc. v. United States.—STAFFA STAMPS—ARTICLES OF GOLD—POSTAGE STAMPS—PRINTED MATTER—PRESSURE SENSITIVE FLAT STRIPS OR FORMS—GOLD LEAF, MOUNTED—TSUS.—C.D. 4846 affirmed November 6, 1980 (C.A.D. 1255).

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

(19 CFR Part 207) Investigation No. 751–TA–3

POTASSIUM CHLORIDE FROM CANADA

Notice of Denial of Petition To Expand the Scope of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Denial of petition to expand scope of investigation No. 751–TA–3 on potassium chloride from Canada.

SUMMARY: This action notifies all interested persons of the denial of a petition filed on behalf of PPG Industries Canada Ltd., Kalium Division (PPG), requesting the Commission to expand the scope of investigation No. 751–TA–3 to include all exporters of potassium chloride from Canada currently covered by T.D. 69–265, the dumping finding at issue in this case. (T D. 69–265 was originally published at 34 F.R. 19904 (Dec. 19, 1969).) The scope of the Commission review investigation of potassium chloride covers all Canadian producers of potassium chloride that have not previously been excluded from the scope of the order. It is the understanding of the Commission, at this time, that Texasgulf, Inc., is the only Canadian producer so situated.

U.S. Borax & Chemical Co. was exempted from the original finding when published in 1969; it was never covered by the order. The following companies—AMAX Potash, Ltd.; Brockville Chemical Industries,

Ltd.; Central Canada Potash Co., Ltd.; Cominco, Ltd.; CF Industries, Inc.; Duval Corp. of Canada; Hudson Bay Mining & Smelting Co., Ltd.; International Minerals & Chemicals Corp.; PPG Industries Canada Ltd., Kalium Division; Potash Co. of America; Potash Co. of Canada; Potash Co. of Saskatchewan; and Swift Canadian Co., Ltd.—were originally covered by the order; however, they have subsequently been excluded from the scope of the order by the Department of the Treasury (the administering authority of the dumping statute prior to the passage of the Trade Agreements Act of 1979).

To qualify for an exclusion, the administering authority requires that a company demonstrate that any sales at less than fair value have been terminated for a substantial period of time, and that the company provide the administering authority with assurances that future sales will not be at less than fair value. 19 CFR 153.44.

PPG's petition was based entirely on the assumption that the companies excluded from the purview of T.D. 69–265 after providing the administering authority with assurances remain, nonetheless, subject to the order. PPG posited that the exclusion with assurances from the order was not a revocation of the T.D. 69–265; rather, it was a conditional revocation of a portion of the antidumping order, or a conditional exclusion from the order.

According to information received by the Commission staff from the U.S. Department of Commerce (the administering authority since the passage of the Trade Agreements Act of 1979), this premise is not correct. Commerce informed the Commission staff that it considers the exclusion of a company from an antidumping order, based on the absence of LTFV sales and pricing assurances, to be a revocation of the order as to that company, i.e., a partial revocation of the order. The absence of LTFV sales and the assurances are preconditions for qualification for a revocation, and no more. Commerce does not distinguish between an exclusion with assurances and a revocation.

In light of the information provided by Commerce to the Commission, the arguments and concerns expressed in PPG's petition become moot. Accordingly, the Commission denied PPG's request expand the scope of investigation No. 751–TA–3 on potassium chloride from Canada.

FOR FURTHER INFORMATION CONTACT: Jane Albrecht, Esq., U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–1627.

By order of the Commission.

Issued: March 3, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN SHELL BRIM HATS	Investigation No. 337–TA–86

Notice of Commission Request for Comments Concerning Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Request for public comment on proposed consent order agreement.

SUMMARY: Commission acceptance of the consent order agreement that appears in full below would result in termination of this investigation. This notice request comments on the agreement within 30 days.

DATES: Comments will be considered if received within 30 days of this notice. Comments should conform with Commission rule 201.8 (19 CFR 201.8) and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: In connection with the Commission's investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) of alleged unfair methods of competition and unfair acts in the importation or sale of certain shell brim hats in the United States, the complainant and the Commission investigative attorney on January 22, 1981, moved to terminate this investigation on the basis of a consent order agreement (Motion No. 86–3). On February 4, 1981, the administrative law judge to which the case was assigned issued his recommendation that the Commission accept the consent order agreement and terminate the investigation. The consent order agreement printed below contains certain technical amendments that have not been reviewed by the ALJ.

The full text of the consent order agreement appears below:

CONSENT ORDER AGREEMENT

I. RECITALS

Zwicker Knitting Mills (complainant) filed a complaint (the complaint) on May 4, 1980, with the U.S. International Trade Commission (Commission) under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (sec. 337).

The Commission, having determined that it has jurisdiction over the subject matter alleged in the complaint and that the complaint states a cause of action under section 337, instituted investigation No. 337–TA–86, on June 20, 1980, and published a Notice of Investigation (45 F.R. 42894, June 25, 1980) to that effect.

The subject matter of this investigation is the alleged importation and sale by Aris-Isotoner Gloves, Inc., and Aris (Philippines), Inc. (collectively respondents) of certain shell brim hats alleged to infringe the claims of U.S. Letters Patent 3,898,699 ('699 patent) owned by complainant, with the alleged effect or tendency to destroy or substantially injure an industry efficiently and economically operated in the United States.

Complainant and respondents desire to resolve the issues involved in the investigation before the ruling by the Commission on any findings of fact or conclusions of law and before the hearing or adjudication of any issue of fact or law related thereto.

M. Brooke Murdock is the Commission investigative attorney for the U.S. International Trade Commission appointed in the Notice of Investigation and represents the Commission as a party to this investigation.

II. AGREEMENT

Now therefore in consideration of the foregoing, complainant, respondents, and the Commission investigative attorney, subject to approval by the Commission, agree to entry by the Commission of the following order.

It is hereby ordered that:

1. *Jurisdiction.*—The Commission has, and respondents concede that the Commission has jurisdiction of the subject matter of investigation and jurisdiction over respondents for purposes of issuing and enforcing this Consent Order.

2. *Settlement purposes only.*—This consent order is for settlement purposes only and does not constitute a determination by the Commission or an admission by respondents that section 337 has been violated as alleged in the complaint or Notice of Investigation, that there has been an infringement of U.S. Patent No. 3,898,699, owned by the complainant, or that said patent is valid in law.

3. *Applicability.*—This consent order shall apply to respondents, singly and jointly, and to their respective officers, directors, employees, successors or assigns.

4. *Conduct prohibited.*—The respondents agree not to import or cause to be imported the shell brim hat product of the type which has been offered for sale and/or sold by the respondent as shown in exhibit 6 attached to the complaint as filed.

5. *Service of consent order.*—Respondents shall serve, within 30 days after the effective date of this consent order, a copy of this consent order upon each of its officers and directors.

6. *Modification.*—Any of the parties to this consent order may apply to the Commission at any time for such futher orders and directions as may be necessary or appropriate for the construction or carrying out of this consent order, for the amendment or modification of any of the provisions hereof, or for the enforcement or compliance herewith.

7. *Violations.*—Any violation of this consent order may result in proceedings before the Commission to determine what, if any, action should be taken with respect to such violation including, an exclusion order, cease and desist order and possible fines.

If the Commission receives written notice that respondent is not complying with the consent order the Commission reserves the right to require the respondents to provide documents including, but not limited to, invoices, books and records, as requested by the Commission which relate to compliance or lack of compliance with this order as applies to the importation of the subject hats.

8. *Waiver.*—The parties waive (1) further procedural requirements including the requirement that the Commission make a determination under section 337, (2) judicial review of this consent order, such waiver not to include any final order made by the Commission as to compliance as referred to in section 7, (3) any requirement that the Commission decision contain findings of fact and conclusions of law, and (4) any other challenge or contest to the validity of this consent order, such waiver not to include any final order made by the Commission as to compliance referred to in section 7.

9. *Termination.*—This investigation is hereby terminated.

COMMENTS REQUESTED: In light of the Commission's duty to consider the public interest in its investigation, the Commission requests written comments from persons concerning the effect of the termination of this investigation based upon the consent order agreement upon: (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. These written comments must be filed with the Secretary to the Commission no later than 30 days after publication of this notice in the Federal Register. The Commission will consider requests for oral argument or oral presentation on this matter if such requests are received in the Office of the Secretary not later than 15 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in con-

fidence must request in camera treatment. Such request should be directed to the Secretary and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's office.

By order of the Commission.

Issued: March 2, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 731–TA–39 (Preliminary)

TUBELESS-TIRE VALVES FROM THE FEDERAL REPUBLIC OF GERMANY

Notice of Institution of Preliminary Antidumping Investigation and Scheduling of Conference

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from the Federal Republic of Germany of tubeless-tire valves allegedly sold or likely to be sold at less than fair value. For the purposes of this investigation, the term "tubeless-tire valve" means any tubeless-tire valve suitable for use with passenger automobile and light truck wheels,[1] provided for in item 692.32 of the Tariff Schedules of the United States.

EFFECTIVE DATE: February 24, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator; 202–523–0439.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This investigation is being instituted following receipt of a petition on February 24, 1981, filed by Nylo-Flex Manufacturing Co., Inc., Mobile, Ala. The petition requested the imposition of additional duties in an amount equal to the amount by which the foreign market value exceeds the U.S. price of tubeless-tire valves imported from the Federal Republic of Germany.

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[1] Light trucks are defined, for purposes of this investigation, as trucks having a gross vehicle weight (GVW) of 10,000 pounds or less.

AUTHORITY

Section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States in materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation by the administering authority. Such a determination must be made within 45 days after the date on which a petition is filed under section 732(b) or on which notice is received from the Department of Commerce of an investigation commenced under section 732(a). Accordingly, the Commission, on March 3, 1981, instituted preliminary antidumping investigation No. 731–TA–39. This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly subpart B thereof.

WRITTEN SUBMISSIONS

Any person may submit a written statement of information pertinent to the subject matter of this investigation to the Commission on or before March 23, 1981. A signed original and 19 copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top Confidential Business Data. Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

CONFERENCE

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m., e.s.t., on March 17, 1981, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. John MacHatton; 202–523–0439. It is anticipated that parties in support of the petition for antidumping duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

INSPECTION OF PETITION

The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Issued: March 4, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN SLIDE FASTNER STRINGERS AND MACHINES AND COMPONENTS THEREOF FOR PRODUCING SUCH SLIDE FASTNER STRINGERS	Investigation No. 337–TA–85

Notice of Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: Having reviewed the record of the investigation and the recommendation of the presiding officer, the Commission has voted to grant Motion Docket No. 85–7 and has ordered the termination of investigation No. 337–TA–85, "Certain Slide Fastener Stringers and Machines and Components Thereof for Producing Such Slide Fastener Stringers," as to all issues and all respondents.

PETITIONS FOR RECONSIDERATION: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days after service of the Commission's action and order. Such petitions must be in conformity with section 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.56).

SUPPLEMENTAL INFORMATION: This investigation was instituted on June 13, 1980 (45 F.R. 40242), following receipt of a complaint filed on behalf of Talon Division of Textron, Inc., a manufacturer of slide fastener stringers and machines and components thereof for producing such slide fastener stringers. The complaint alleged the violation of section 337 of the Tariff Act of 1930 with respect to the importation into the United States and sale of certain slide fastener stringers which were alleged to infringe claim 1 of U.S. Letters Patent 3,143,779, and of certain machines and components thereof for producing such slide fastener stringers which were alleged to infringe claim 5 of U.S. Letters Patent 3,123,103. Named as respondents were Yoshida Kogyo K.K. and Y.K.K. (USA), Inc.

The complaint, inter alia, requested that the Commission issue an order excluding the subject goods from importation into the United States during the pendency of the investigation. On August 21, 1980, the Commission voted to deny such temporary relief. In light of this vote and the impending expiration dates of the patents in issue, the parties concluded that the public interest could not be served by further pursuit of this investigation. Therefore, on December 5, 1980, they moved to terminate this investigation (Motion Docket No. 85–7). The presiding officer has recommended that the motion be granted and that the investigation be terminated.

ADDITIONAL INFORMATION: The Commission's action and order, and all other public documents on the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., room 156, Washington, D.C. 20436; telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., room 226, Washington, D.C. 20436; telephone 202–523–0480.

By order of the Commission.

Issued: March 3, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN MULTICELLULAR PLASTIC FILM	Investigation No. 337–TA–54A

Commission Action and Order

BACKGROUND

The U.S. International Trade Commission conducted investigation No. 337–TA–54A, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), to determine whether the process used by Huang Well Industrial Co., Ltd., of Taipei, Taiwan, to manufacture multicellular plastic film abroad would, if practiced in the United States, infringe claims 1 or 2 of U.S. Letters Patent 3,416,984.

ACTION

Having reviewed the record in this matter, the Commission on February 27, 1981, determined that the Huang Well process, if

practiced in the United States, would not infringe claims 1 or 2 of U.S. Letters Patent 3,416,984.

ORDER

Accordingly, it is hereby ordered that—

1. Investigation No. 337–TA–54A is terminated as to all issues and all parties based on the Commission's determination that the process used by Huang Well Industrial Co., Ltd., to manufacture multicellular plastic film would, if practiced in the United States, not infringe claim 1 or 2 of U.S. Letters Patent 3,416,984; and

2. This action and order be published in the Federal Register and served, on each party of record in this investigation and upon the U.S. Department of Health and Human Services, U.S. Department of Justice, the Federal Trade Commission, and the U.S. Customs Service.

By order of the Commission.

Issued: March 3, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN COIN-OPERATED
AUDIO-VISUAL GAMES
AND COMPONENTS THEREOF

Investigation No. 337–TA–87

Notice of Termination of Universal Co., LTD., Universal U.S.A., Inc., and Sunrise New Sound, Inc., as Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Termination of Universal Co., Ltd., Universal U.S.A., Inc., and Sunrise New Sound. Inc., as party respondents in the above-captioned investigation.

SUMMARY: Having determined that this matter is properly before the Commission and having reviewed the record in this investigation, including the recommendation of the presiding officer, the joint motion to terminate (Motion No. 87–15), and papers in support thereof, the Commission on March 3, 1981, granted a motion to terminate Universal Co., Ltd., Universal U.S.A., Inc., and Sunrise New Sound, Inc., as party respondents in investigation No. 337–TA–87.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the

importation into and sale in the United States of certain coin-operated audio-visual games and components thereof. The complainant, Midway Manufacturing Co., and respondents, Universal Co., Ltd., Universal U.S.A., Inc., and Sunrise New Sound, Inc., jointly moved to terminate the investigation as to the above-named respondents on the basis of a license agreement entered into on October 10, 1980. The presiding officer certified the motion to the Commission on November 24, 1980, with her recommendation that it be granted. The Commission then published for comment in the Federal Register notice of the motion to terminate and a nonconfidential version of the settlement agreement forming the basis therefore.

Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission's action and order. Such petitions must be in accord with Commission rule 210.56 (19 C.F.R. 210.56).

Copies of the Commission's action and order in this matter and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel. U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0148.

By order of the Commission.

Issued: March 5, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 22–43

CERTAIN TOBACCO

AGENCY: U.S. International Trade Commission.

ACTION: Institution of an investigation under section 22(a) of the Agricultural Adjustment Act (7 U.S.C. 624(a)) to determine whether tobacco, currently provided for in items 170.3210, 170.3500, 170.6040, and 170.8045 of the Tariff Schedules of the United States Annotated (TSUSA), is being or is practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the tobacco program of the Department of Agriculture, or to reduce substantially the amount of any product being processed in the United States from such domestic tobacco.

EFFECTIVE DATE: March 5, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. William Lipovsky; 202–724–0097.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The current investigation (No. 22–43) is being instituted following receipt of a letter dated January 18, 1981, from the President requesting that the Commission make an investigation under section 22 of the Agricultural Adjustment Act to determine whether the above-described tobacco is being, or is practically certain to be, imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the tobacco program of the Department of Agriculture, or to reduce substantially the amount of any product being processed in the United States from such domestic tobacco, and to report its findings and recommendations to the President at the earliest practicable date.

PREHEARING PROCEDURES

To facilitate the hearing process, it is requested that persons wishing to appear at the hearing submit prehearing briefs enumerating and discussing the issues which they wish to raise at the hearing. Nineteen copies of such prehearing briefs should be submitted to the Secretary to the Commission no later than the close of business on May 5, 1981. Copies of any prehearing briefs submitted will be available for public inspection in the Office of the Secretary. While submission of prehearing briefs does not prohibit submission of prepared statements in accordance with section 201.12(d) of the Commission's Rules of Practice and Procedure (19 CFR 201.12(d)), it is unnecessary to submit such a statement if a prehearing brief is submitted instead. Oral presentations should, to the extent possible, be limited to issues raised in the prehearing briefs.

A prehearing conference will be held on Thursday, April 23, 1981, at 9 a.m., e.s.t., in room 117 of the U.S. International Trade Commission Building.

Persons not represented by counsel or public officials who have relevant matters to present may give testimony without regard to the suggested prehearing procedures outlined above.

PUBLIC HEARING

The Commission will hold a public hearing in connection with this investigation beginning at 10 a.m., e.d.t., on May 11, 1981, in the

Hearing Room of the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.) on April 22, 1981. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 204 (19 CFR 204) and part 201 (19 CFR 201).

WRITTEN SUBMISSIONS

In addition to or in lieu of an appearance at the hearing, interested persons may submit to the Commission a written statement of information pertinent to the subject matter of this investigation. Written statements should be addressed to the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, and must be received not later than May 18, 1981. All written submissions, except for confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential must be submitted separately, and each sheet must be clearly marked at the top Confidential Business Data. Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

By order of the Commission.

Issued: March 5, 1981.

KENNETH R. MASON,
Secretary.

U.S. GOVERNMENT PRINTING OFFICE : 1981 O - 338-579

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